90-892

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FILED
DEC 6 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

THE CITY OF SEATTLE,
Petitioner,
v.
FIRST COVENANT CHURCH OF SEATTLE, WASHINGTON,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of Washington

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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December 1990

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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Note: The documents included in this Appendix are reproduced as they appear in the originals. To the extent that the original documents include typographical errors, those errors appear here as well.

APPENDIX

THE SUPREME COURT OF WASHINGTON

No. 56377-2
En Banc

FIRST COVENANT CHURCH OF SEATTLE, WASHINGTON,
Appellant,

v.

THE CITY OF SEATTLE,
Respondent.

March 22, 1990

DORE, J.—This is a case of first impression.

First Covenant Church challenges the constitutionality of two separate but interrelated ordinances, the Seattle Landmarks Preservation Ordinance 106348 [1] and Seattle ordinance 112425 designating First Covenant Church a landmark. The Church brought a declaratory judgment action seeking declaration that the Seattle ordinance designating the church a landmark and the Seattle Landmarks Preservation Ordinance as applied to churches were unconstitutional and void. The trial court held that the Church's claim was premature and entered summary judgment in favor of the City. We hold that this case presents a justiciable issue properly presented for declaratory judgment and that the designation ordinance and the Landmarks Preservation Ordinance as applied to churches are unconstitutional as they violate the right of free exercise of religion as guaranteed by the United States and Washington State Constitutions. We reverse.

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[1] This ordinance is now codified at Seattle Municipal Code 25.12.

FACTS

First Covenant Church of Seattle is a nonprofit Washington corporation. The Church owns and operates the church located at Pike and Bellevue in Seattle which is used exclusively for religious purposes.

In 1977, the City of Seattle adopted the Seattle Landmarks Preservation Ordinance to, *inter alia*,

> designate, preserve, protect, enhance and perpetuate those sites, improvements and objects which reflect significant elements of the City's cultural, aesthetic, social, economic, political, architectural, engineering, historic or other heritage . . . .

SMC 25.12.020(B) (1977). Pursuant to that ordinance, the Landmarks Preservation Board nominated First Covenant Church as a landmark on October 15, 1980. A public hearing was held on January 7, 1981, at which the Church objected to the nomination. Following the hearing, the board voted to approve the designation of the church as a landmark. On April 22, 1981, the board voted to adopt controls to preserve the exterior of the church and recommended to the Seattle City Council that it approve those controls.

The Church and the City were unable to come to an agreement regarding application of the controls and the matter was referred to a hearing examiner. A public hearing was held before an examiner on June 3, 1981, at which the Church objected to designation of the church as a landmark building. On July 2, 1981, the hearing examiner recommended that the city council approve the controls proposed by the board for the preservation of the church facade.

Over 4 years later, September 17, 1985, the city council adopted ordinance 112425 formally designating the church a landmark and placing specific controls upon the Church's ability to alter the structure's exterior. More than 5 years elapsed from the date the board nominated

the church for landmark status until the city council passed the designating ordinance. Throughout that entire period the Church remained subject to the controls proposed by the board and the landmarks ordinance's provisions requiring the landmark owner to obtain a Certificate of Approval for structural changes necessitating a building permit.[2]

The Church brought a declaratory judgment action against the City in January 1986, seeking declaration that application of the Seattle Landmarks Preservation Ordinance to churches was unconstitutional and that the ordinance designating First Covenant Church a landmark was void. The Church then moved for summary judgment on the issues of the landmarks ordinance's constitutionality as applied to churches. The City filed a cross motion for partial summary judgment on the same issues. The trial court entered an order denying the Church's motion and granting the City partial summary judgment without prejudice to the Church's remaining contentions of law and fact. The trial court held that the landmarks ordinance properly applied to churches and that until the City applied the landmarks ordinance in a manner that impinged upon the Church's constitutional rights to operate its religious property without interference from the City, the Church's claim that the landmarks ordinance violated its rights of religious freedom was premature.

Prior to trial, the City filed a motion for summary judgment seeking dismissal of all of the Church's remaining causes of action. The trial court granted summary judgment and dismissed the Church's complaint in its entirety with prejudice.

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[2] Under the Landmarks Preservation Ordinance, once the board designates a landmark the provisions of the landmarks ordinance requiring a Certificate of Approval for alterations or significant changes to the landmark apply to the property owner. SMC 25.12.390 (1977).

The Church appealed both summary judgment orders. The Court of Appeals certified the appeal here.

ISSUES

Two issues are presented:

> (1) Is a constitutional challenge to the Seattle Landmarks Preservation Ordinance by the Church premature until the ordinance is enforced?
>
> (2) Is the Seattle Landmarks Preservation Ordinance as applied to churches unconstitutional under the free exercise of religion provisions of the United States and Washington State Constitutions?

ANALYSIS

The issue of whether the Church's cause of action is premature requires a determination of whether there exists a justiciable controversy and whether the Church's challenge satisfies the ripeness doctrine. We find that a justiciable controversy exists and that the Church's claims are ripe for judicial determination.

The Church brought its action for declaratory judgment pursuant to the Uniform Declaratory Judgments Act, RCW 7.24.020, and applicable court rules. In order for a court to rule on a declaratory judgment, the case must present a justiciable controversy. *State ex rel. Graham v. Northshore Sch. Dist. 417*, 99 Wn.2d 232, 246, 662 P.2d 38 (1983). This court established that a justiciable controversy exists under the Act if the controversy presents:

> (1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a

judicial determination of which will be final and conclusive.

Diversified Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811, 815, 514 P.2d 137 (1973); *Spokane v. Taxpayers*, 111 Wn.2d 91, 96, 758 P.2d 480 (1988). All four elements must be satisfied or the court must dismiss the case; otherwise, the court enters into the prohibited area of advisory opinions. *Lawson v. State*, 107 Wn.2d 444, 460, 730 P.2d 1308 (1986). This case satisfies all four elements and, therefore, presents this court with a justiciable controversy.

The Church argued that the designation of the church structure as a landmark and the imposition of controls constituted substantial interference by the City with the Church's religious freedom. According to the Church, several impacts occurred immediately upon the board's designation of the church as a landmark. Those impacts included: interference with the Church's freedom to alter the exterior of the church structure; necessary secular approval of any proposed alteration of the facade requiring additional paperwork, negotiations and hearings; a limitation on the Church's ability to sell its property; and uncertainty of discretionary approval confronting the Church in its planning of any exterior change. In addition, an uncontroverted affidavit stated that landmark designation of the church resulted in a depreciation of the market value of the property from $700,000 to $400,000. Clerk's Papers, at 345-46. Affidavit of John Paul Rea.

The City contends that, absent the submission of a proposal for alteration, the Church's claim is speculative and premature. The trial court agreed and granted the City's motion for summary judgment.

The Church's challenge to the constitutionality of the landmarks ordinance as applied to church property and the designation of the church as a landmark satisfies the justiciable controversy test. The dispute involves a pres-

ent controversy between parties with opposing interests. The landmarks board designated First Covenant Church a landmark and the city council formalized that designation by passing ordinance 112425. The Church asserts that landmark designation of churches violates the constitutional guaranty of freedom of religious expression. The interests of the City and the Church are substantial and a determination by this court as to the constitutionality of the landmarks ordinance will clarify valuable property rights of churches and their freedom to practice religion. A decision here will be welcomed throughout the United States, as this is a case of first impression on this constitutional challenge.

The Church's Constitutional Challenge Is Ripe for Adjudication

In its motion for summary judgment, the City argued that the Church's cause of action was not ripe for judicial review under the ripeness doctrine established by the United States Supreme Court.[3] The Church responded that the resultant impacts of the landmark designation of the church created a present controversy ripe for judicial review.

Deciding whether a case presents a cause of action ripe for judicial determination requires an evaluation of "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Labs v. Gardner*, 387 U.S. 136, 149, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967); *Standard Alaska Prod. Co. v. Schaible*, 874 F.2d 624, 627 (9th Cir. 1989). "A claim is fit for [judicial] decision if the issues raised are primarily legal, do not require further factual devel-

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[3] The Supreme Court developed the ripeness doctrine in a trilogy of cases decided in 1967. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967); *Toilet Goods Ass'n v. Gardner*, 387 U.S. 158, 18 L. Ed. 2d 697, 87 S. Ct. 1520 (1967); *Gardner v. Toilet Goods Ass'n*, 387 U.S. 167, 18 L. Ed. 2d 704, 87 S. Ct. 1526 (1967).

opment, and the challenged action is final." 874 F.2d at 627.

The Church's cause of action does not fail for lack of ripeness. The record before the court contains the factual background surrounding the designation of First Covenant Church and no additional facts need be developed to determine the constitutionality of that designation. Furthermore, the designation ordinance constitutes a final action by the Landmarks Preservation Board and the Seattle City Council. The Church unsuccessfully appealed the designation decision through numerous administrative procedures set forth in the Landmarks Preservation Ordinance. The Church has exhausted its administrative remedies and the only forum now available for appeal is the judicial system.

We hold that the Church's challenge to the Landmarks Preservation Ordinance and the designation ordinance is ripe for judicial review and that the ordinances violate the Church's constitutional right of free exercise of religion.

THE ORDINANCES CREATE AN UNCONSTITUTIONAL INFRINGEMENT UPON THE CHURCH'S RIGHT OF FREE EXERCISE OF RELIGION

The issue is whether the law should prefer religious freedom or an exercise of the police power to maintain the architectural and cultural interests associated with landmark preservation. Although First Amendment rights are not absolute, "freedom of religion [is] in a preferred position." *Murdock v. Pennsylvania*, 319 U.S. 105, 115, 319 U.S. 166, 87 L. Ed. 1292, 87 L. Ed. 2d 1330, 63 S. Ct. 870, 63 S. Ct. 882, 63 S. Ct. 891, 146 A.L.R. 81 (1943). *See also Thomas v. Review Bd. of Ind. Empl. Sec. Div.*, 450 U.S. 707, 717, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981) (religious beliefs are protected by the Free Exercise Clause which provides special protection to the exercise of religion).

The separation between Church and State is rooted in the historical foundations of this nation. Responding to a request from the Danbury Baptist Association, President Thomas Jefferson wrote:

> "Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions,—I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. . . ."

Reynolds v. United States, 98 U.S. 145, 164, 25 L. Ed. 244 (1878). While recognizing instances where the compelling interests of the government outweigh its citizens' right to freely pursue their religious beliefs, the judiciary in this nation consistently prohibits unjustified governmental interference with an individual's constitutional right of free exercise of religion.

The Church contends that the Landmarks Preservation Ordinance, as applied to church property, and the designating ordinance are unconstitutional as they violate the Church's right of free exercise of religion guaranteed by the first amendment to the United States Constitution [4] and Washington's Const. art. 1, § 11 (amend. 34).[5]

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[4] The first amendment to the United States Constitution provides in pertinent part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .".

[5] Article 1, section 11 of the Washington Constitution provides that "[a]bsolute freedom of conscience in all matters of religious . . . worship . . . shall be guaranteed to every individual". Const. art. 1, § 11 (amend. 34).

To establish a violation of free exercise, the complaining party must show "the coercive effect of the enactment as it operates against him in the practice of his religion." *School Dist. v. Schempp*, 374 U.S. 203, 223, 10 L. Ed. 2d 844, 83 S. Ct. 1560 (1963); *Witters v. Commission for the Blind*, 112 Wn.2d 363, 371, 771 P.2d 1119, *cert. denied*, —— U.S. ——, 107 L. Ed. 2d 106, 110 S. Ct. 147 (1989). If such an infringement is established, the court subjects the challenged legislation to strict scrutiny analysis requiring the governmental body to prove that (1) a compelling state interest exists to justify the regulation and (2) the regulation constitutes the least restrictive means to achieve the government's objective. *Sherbert v. Verner*, 374 U.S. 398, 10 L. Ed. 2d 965, 83 S. Ct. 1790 (1963); *Wisconsin v. Yoder*, 406 U.S. 205, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972); *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 94 L. Ed. 2d 190, 107 S. Ct. 1046 (1987).

In *Sherbert v. Verner*, the South Carolina Employment Security Commission denied unemployment benefits to a Sabbatarian who was fired for refusing to work Saturdays, the Sabbath Day of her religion. The South Carolina Unemployment Compensation Act provided "that a claimant is ineligible for benefits '[i]f . . . he has failed, without good cause . . . to accept available suitable work when offered him by the employment office or the employer . . . .'" 374 U.S. at 401. The Employment Security Commission found that the appellant's refusal to work Saturdays placed her within that provision disqualifying her for unemployment benefits. 374 U.S. at 401. The South Carolina Supreme Court affirmed, rejecting appellant's contention that the disqualifying provision in the statute violated her First Amendment right of free exercise of religion. 374 U.S. at 401. On appeal, the United States Supreme Court stated that for the decision of the South Carolina Supreme Court

> to withstand appellant's constitutional challenge, it must be either because her disqualification as a ben-

> eficiary represents no infringement by the State of her constitutional rights of free exercise, or because any incidental burden on the free exercise of appellant's religion may be justified by a "compelling state interest in the regulation of a subject within the State's constitutional power to regulate . . . ."

(Citation omitted.) 374 U.S. at 403.

Turning to the appellant's First Amendment challenge, the Court found that the disqualifying provision clearly burdened the free exercise of appellant's religion as it pressured her to forgo that practice. 374 U.S. at 403-04. Having found an infringement of the appellant's right of free exercise, the Court then subjected the statute to strict scrutiny analysis. The Court stated that

> [i]t is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation," *Thomas v. Collins*, 323 U. S. 516, 530 [89 L. Ed. 430, 65 S. Ct. 315] (1945).

374 U.S. at 406. Finding that the State did not advance such an abuse or danger, the Court reversed the State Supreme Court and remanded the case for further proceedings. 374 U.S. at 410.

Several years later, the Court affirmed the applicability of strict scrutiny analysis to governmental interference with the free exercise of religion. In *Wisconsin v. Yoder*, members of the Amish faith appealed their convictions for violating Wisconsin's compulsory school-attendance law which required children to attend school until age 16. 406 U.S. at 207.[6] The Amish asserted that

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[6] The appellees were convicted and fined $5 for their refusal to send their children to public school after they had completed the eighth grade. 406 U.S. at 207.

the statute violated their right of free exercise. They believed, in accordance with the tenets of their faith, that their children's attendance in high school was contrary to the Amish religion and way of life. 406 U.S. at 209. The Wisconsin Supreme Court found the law invalid under the Free Exercise Clause of the First Amendment and the State appealed. 406 U.S. at 207.

The United States Supreme Court applied strict scrutiny analysis to the law stating that in order for the State to overcome the free exercise challenge:

> it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause.

406 U.S. at 214. Finding that the State's interest in compulsory education did not outweigh the appellees' right of free exercise of religion, the court concluded

> [t]he essence of all that has been said and written on the subject is that only those interests of the highest order, and those not otherwise served can overbalance legitimate claims to the free exercise of religion.

406 U.S. at 215. *Cf. Thomas v. Review Bd. of Ind. Empl. Sec. Div.*, 450 U.S. 707, 718, 67 L. Ed. 2d 624, 101 S. Ct. 1425 (1981) (State's denial of unemployment benefits to Jehovah's Witness who refused transfer to munitions division on religious grounds unconstitutionally burdened his right to free exercise of religion; "The state may justify in inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest.").

Recently, the Court appeared to step back from the strict scrutiny standard advancing instead a less rigorous standard of review for free exercise challenges. In *Bowen v. Roy*, 476 U.S. 693, 90 L. Ed. 2d 735, 106 S. Ct. 2147

(1986), the Court addressed a First Amendment challenge to a federal statutory requirement that participants in certain welfare programs must provide state welfare agencies administering the program with their social security number and those of each member of their household as a condition of receiving benefits. 476 U.S. at 695. The appellees contended that obtaining a social security number for their daughter would violate their Native American religious beliefs. 476 U.S. at 695. Rejecting the contention that the statutory requirement violated appellees' right of free exercise, Chief Justice Burger analyzed the statute under a lower standard of review. The Chief Justice stated that "the Government meets its burden when it demonstrates that a challenged requirement for governmental benefits, neutral and uniform in its application, is a reasonable means of promoting a legitimate public interest." 476 U.S. at 707-08. However, only Justices Powell and Rehnquist concurred in that portion of the majority opinion.

One year later, the Court decisively rejected Chief Justice Burger's less rigorous standard. In *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 94 L. Ed. 2d 190, 107 S. Ct. 1046 (1987), once again the Court reviewed the denial of unemployment benefits to an individual terminated from employment for her refusal to work on her Sabbath Day. Responding to the claim that its denial of benefits violated appellant's right of free exercise, the Unemployment Appeals Commission argued that the Court should apply the standard of review set forth in *Roy*. Justice Brennan, writing for a 6-Justice majority, stated that five Justices rejected the argument in *Roy* and that "[w]e reject the argument again today." 480 U.S. at 141. Setting forth the applicable standard of review, the Court stated that "[b]oth *Sherbert* and *Thomas* held that such infringements must be subjected to strict scrutiny and could be justified only by proof by the State of a compelling interest." 480 U.S. at 141. Applying strict scrutiny analysis, the Court held that

Florida's denial of unemployment benefits to appellant violated the Free Exercise Clause of the First Amendment. 480 U.S. at 146.[7]

The ordinances at issue require the Church to seek secular approval of any proposed change to the church's facade requiring a building permit. SMC 25.12.670 (1977); Seattle city ordinance 112425 (1985) app. B, at 226. The landmarks ordinance requires that once the landmarks board files an approval of a nomination of a landmark, the landmark owner must obtain a Certificate of Approval from the board before the owner may make alterations or significant changes to the designated features or characteristics of the landmark or make significant changes or alterations which would violate any control imposed by the designating ordinance. SMC 25.12.670 (1977).[8] A control set forth in the designating ordinance specifically requires the Church to obtain a

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[7] As recently as the last term, the Court employed strict scrutiny analysis to a government regulation challenged as violative of the Free Exercise Clause. In *Hernandez v. Commissioner*, —— U.S. ——, 104 L. Ed. 2d 766, 786, 109 S. Ct. 2136, 2148 (1989), the Court stated that "[t]he free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden."

[8] Section 25.12.670 of the Seattle Landmarks Preservation Ordinance sets forth the requirement of the Certificate of Approval:

"After the filing of an approval of nomination with the Superintendent and thereafter as long as proceedings for a designation are pending or a designating ordinance so requires, a certificate of approval must be obtained, or the time for denying a certificate of aproval must have expired, before the owner may:

"A. Make alterations or significant changes to specific features or characteristics of the site, improvement or object suggested for preservation in the approval of nomination, or thereafter specified in the report on approval of designation of the decision of the Hearing Examiner, whichever was issued most recently, while proceedings under this chapter are pending; or

"B. Make alterations or significant changes which would be in violation of specific controls imposed by a designating ordinance."

Certificate of Approval for any alteration to the exterior of the church structure requiring a building permit. *See* section 2 of Seattle city ordinance 112425 (1985) app. B, at 226. The practical effect of the provisions is to require a religious organization to seek secular approval of matters potentially affecting the Church's practice of its religion.

The City claims that the designating ordinance's exemption for changes based upon liturgy precludes any interference by the City with the Church's practice of religion. The designating ordinance provides:

> Section 2. The following controls upon alteration of the landmark are hereby imposed:
>
> > A Certificate of Approval must be obtained or the time for denying a Certificate of Approval must have expired before the owner may make any alteration which requires a building permit, to any portion of the exterior of the building; Provided, that all in kind maintenance and repair of the exterior and any alterations which do not require a building permit shall be excluded from the Certificate of Approval requirements; and Provided further that *nothing herein shall prevent any alteration of the exterior when such alterations are necessitated by changes in liturgy*, it being understood that the owner is the exclusive authority on liturgy and is the decisive party in determining what architectural changes are appropriate to the liturgy. *When alterations necessitated by changes in liturgy are proposed, the owner shall advise the Landmarks Preservation Board in writing of the nature of the proposed alterations and, the Board shall issue a Certificate of Approval. Prior to the issuance of any Certificate, however, the Board and owner shall jointly explore such possible alternative design solutions as may be appropriate or neces-*

sary to preserve the designated features of the landmark.

(Italics ours.) Seattle city ordinance 112425 (1985). We find that the liturgy exception does not mitigate the City's infringement upon the Church's right of free exercise. The liturgy exception establishes a vague standard which does not withstand close scrutiny.

The designating ordinance contains no definition of "liturgy". Absent a contrary definition provided in the ordinance, words of an ordinance are to be given their usual and ordinary meaning. *Dominick v. Christensen*, 87 Wn.2d 25, 27, 548 P.2d 541 (1976). *Webster's Third New International Dictionary* (1971) at page 1323 defines liturgy as "a rite or series of rites, observances, or procedures prescribed for public worship in the Christian church in accordance with authorized or standard form". According to that definition, liturgy essentially refers to the religious activity occurring within a church as part of the religious ritual. It provides a vague criterion for the Church to rely upon when planning alterations to the church exterior. Would a wider door to permit access by handicapped parishioners comprise a liturgical change? Although the widening of the door does not relate directly to the rites or procedures of worship in the church, it does facilitate the ability of disabled persons to participate in religious services and activities. The anomalies created by the liturgy exception are cumbersome and would result in numerous delays in carrying out routine church work. We find that the liturgy exception constitutes a vague and unworkable criterion that fails to accommodate the constitutional rights of the Church and infringes on the Church membership's ability to freely practice its religion.

Even if the liturgy exception represented an appropriate criterion, the requirements of the designating ordinance still violate the Church's right of free exercise. The controls placed upon the Church require that if the Church proposes a change based upon liturgy, prior to

the issuance of a Certificate of Approval "the Board and owner shall jointly explore such possible alternative design solutions as may be appropriate or necessary to preserve the designated features of the landmark." Seattle city ordinance 112425 (1985) app. B, at 226. Regardless of the religious nature of the proposed alteration, the Church must submit its plans to the board, a secular body, and negotiate possible alternatives. That requirement creates unjustified governmental interference in religious matters of the Church and thereby creates an infringement on the Church's constitutional right of free exercise. Furthermore, the parallel provisions of the landmarks ordinance requiring a landmark owner to obtain a Certificate of Approval prior to making structural changes to the landmark also infringe upon the Church's religious freedom.

A substantial infringement of a First Amendment right can be justified only by proof of a compelling governmental interest. *Hobbie v. Unemployment Appeals Comm'n*, 480 U.S. 136, 141, 94 L. Ed. 2d 190, 197-98, 107 S. Ct. 1046, 1049 (1987); *Sherbert v. Verner*, 374 U.S. 398, 403, 10 L. Ed. 2d 965, 83 S. Ct. 1790 (1963). Landmark preservation laws constitute a use of police power to maintain the aesthetic and cultural features of a community. Such ordinances do not represent efforts by the government to further its interest in the health and safety of its citizens. The United States Supreme Court found that landmark preservation represented an important state interest but did not express the view that it constituted a compelling interest. *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978).

In *Penn-Central*, the Supreme Court addressed the validity of the application of New York City's Landmarks Preservation Law to a commercial building. The owners of Grand Central Terminal intended to construct a high-rise office building above the terminal. 438 U.S. at 116-17. The New York City Landmarks Preservation Commis-

sion previously designated the terminal a historical landmark and refused to grant approval of the owners' building plans. The owners filed suit alleging, *inter alia*, that the application of the landmarks law constituted a taking without just compensation and deprived the owners of their property without due process. 438 U.S. at 119. Initially, the Court acknowledged the public interest in preserving historical landmarks. 438 U.S. at 107. Turning to the taking issue, the Court stated that the rational relation standard used in challenges to zoning laws applied as well to challenges to landmark designations. 438 U.S. at 133 n.29. Rejecting appellants' claims, the Court held that based upon the present record "[t]he restrictions imposed are substantially related to the promotion of the general welfare . . .". 438 U.S. at 138.

The appellants did not allege any violation of a fundamental right. Absent such a claim, the Court was able to employ minimal scrutiny in its analysis of New York City's Landmarks Preservation Law. Although the Court held that the landmarks law satisfied the limited inquiry of minimal scrutiny, it seems most likely the Court would not have reached the same result had it analyzed the law under strict scrutiny.

We hold that the preservation of historical landmarks is not a compelling state interest. Balancing the right of free exercise with the aesthetic and community values associated with landmark preservation, we find that the latter is clearly outweighed by the constitutional protection of free exercise of religion and the public benefits associated with the practice of religious worship within the community. *See Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 525, 496 N.E.2d 183, 505 N.Y.S. 2d 24 (Meyer, J., dissenting), *cert. denied*, 479 U.S. 985 (1986).

CONCLUSION

We hold that the Seattle Landmarks Preservation Ordinance 106348 and Seattle ordinance 112425 designating First Covenant Church a landmark violate the Church's First Amendment rights under the United States Constitution and Washington's Const. art. 1, § 11 (amend. 34).

We reverse the City's summary judgment and grant summary judgment of dismissal to the Church.

CALLOW, C.J., UTTER, and DURHAM, JJ., and PEARSON, J. Pro Tem., concur.

UTTER, J. (concurring)—I agree with the majority's conclusion that this declaratory judgment action is ripe for decision and that the landmark preservation ordinance cannot be applied to the First Covenant Church. I write separately to emphasize the facts which require this decision in this case and to indicate the legal standards which should govern such cases in the future.

I

As the majority points out, the landmark designation has reduced the value of the church's property, its most valuable asset. Since the landmark designation is complete and has had an impact on the church, consideration of this case is not premature.

The dissent argues correctly that we should dispose of the question of whether state regulation of the church's building modifications violates the church's free exercise rights by adopting the defendant's interpretation of the ordinance. This would make any changes to the church's structure for religious purposes exempt from the ordinance's review procedures.

In order to do that, however, we have to reach the issue. Because the case presents a ripe justiciable controversy, we should reach this issue.

The dissent cites two cases to support its view that this case is neither ripe nor justiciable. See dissenting opinion, at 418. In both these cases the court found that the matter before it was justiciable. *See Spokane v. Taxpayers*, 111 Wn.2d 91, 96, 758 P.2d 480 (1988) (controversy justiciable); *Abbot Labs. v. Gardner*, 387 U.S. 136, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967) (controversy ripe). Therefore, the dissent's reliance on these cases is misplaced.

A justiciable controversy requires (1) an existing dispute; (2) parties having genuine opposing interests; (3) direct and substantial interests at stake; and (4) a controversy amenable to conclusive judicial resolution. *Spokane*, 111 Wn.2d at 96. This case involves an existing dispute about whether this specific church may be designated a landmark. The State has an interest in preserving First Covenant and the church has an interest in operating it without state interference and without diminution in value. The judiciary can conclusively decide this case, as the dissent has demonstrated, with respect to the liturgy exemption.

The dissent complicates the inquiry into justiciability greatly by introducing the concept of ripeness as articulated by the United States Supreme Court in *Abbott Labs. v. Gardner*, *supra* at 148-49. None of our prior cases have cited *Gardner* or approved of its charaterization of the ripeness doctrine.

More importantly, *Gardner* supports finding that this case is ripe. *Gardner* involved a preenforcement challenge to Food and Drug Administration regulations. *Gardner*, 387 U.S. at 138-39. The *Gardner* Court held that the challenge was ripe and remanded to the Court of Appeals for the Third Circuit for a ruling on the merits. 387 U.S. at 156. Although the government had not yet enforced the regulations against the drug companies, the Court held that the impact of the regulations

"is sufficiently direct and immediate as to render the issue appropriate for judicial review at this stage." *Gardner*, 387 U.S. at 152. The Court noted that the purpose of the declaratory judgment act required judicial review. *See Gardner*, 387 U.S. at 152. Similarly, the church has been designated a landmark; like the drug companies, it must obey the challenged law if constitutional. It need not await the application of each individual restriction of the act before challenging its constitutionality. It has a right to the declaratory judgment it seeks.

Washington precedent on ripeness in land-use cases does not allow us to delay a decision just because the litigant has not suffered enough injury to satisfy the court. In our previous cases we have decided whether claims were ripe on the basis of whether the administrative action was final, not on the intensity of the litigant's complaint. *See Estate of Friedman v. Pierce Cy.*, 112 Wn.2d 68, 768 P.2d 462 (1989) (holding that a litigant's taking claim was not ripe because of a failure to exhaust administrative remedies); *Orion Corp. v. State*, 109 Wn.2d 621, 747 P.2d 1062 (1987) (litigant's taking claim ripe because further administrative appeals would be futile), *cert. denied*, 486 U.S. 1022 (1988); *Department of Ecology v. Kirkland*, 84 Wn.2d 25, 523 P.2d 1181 (1974) (issue ripe for review because administrative action was final). It seems that the dissent has confused the issue of ripeness with the question of whether the church's claim is meritorious.

II

The majority's conclusion that application of this ordinance to this church constitutes a free exercise violation is correct because the church has shown that application of the ordinance to it greatly diminishes the value of its principal asset. As the dissent states, adopting the City's construction of its own ordinance will avoid the necessity of deciding the question of whether state approval

of the church's modification of its building violates the First Amendment. But the issue of whether the ordinance violates the constitution because of its impact on church finances requires a constitutional decision.

Prior to the United States Supreme Court's decision in *Jimmy Swaggart Ministries v. Board of Equalization*, —— U.S. ——, 107 L. Ed. 2d 796, 110 S. Ct. 688 (1990),, Supreme Court precedent seemed to prohibit the imposition of a financial burden on the practice of religion. The Supreme Court had struck down a license tax on Jehovah's Witnesses and a tax on the sale of religious materials because these taxes burdened the free exercise of religion. *See Murdock v. Pennsylvania*, 319 U.S. 105, 319 U.S. 166, 87 L. Ed. 1292, 87 L. Ed. 1330, 63 S. Ct. 870, 63 S. Ct. 882, 63 S. Ct. 891, 146 A.L.R. 81 (1943); *Follett v. McCormick*, 321 U.S. 573, 88 L. Ed. 938, 64 S. Ct. 717 (1944). Because of this it appeared that a land use restriction imposed specifically on a church causing gross diminution in the value of its principal asset might violate the free exercise clause.[9]

The Supreme Court's decision in *Swaggart*, handed down after this case was argued, shows that a financial burden does not constitute a per se free exercise violation. The Court upheld the application of a tax on the distribution of literature to the sales operations of the Swaggart ministry. It distinguished *Murdock* and *Follett*

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[9] The comments of Justices Scalia, Rehnquist and Kennedy in their dissent in *Texas Monthly, Inc. v. Bullock*, —— U.S. ——, 103 L. Ed. 2d 1, 109 S. Ct. 890 (1989) demonstrate this. The *Texas Monthly* Court invalidated a tax exemption for sales of religious periodicals as violating the establishment clause of the First Amendment. *Texas Monthly*, 109 S. Ct. at 894. The dissenters noted that *Murdock* and *Follett* might require a tax exemption for religious periodicals lest a free exercise violation occur. *Texas Monthly*, at 908. The same logic would require an exemption for land use controls upon churches which create a financial burden.

on the grounds that the taxes struck down in those cases constituted prior restraints on religious activities.[10]

It went on to limit its decision by leaving open the argument that a more onerous tax imposed upon a church could interfere with religious activity and constitute a free exercise violation. It had to leave this argument open because in *Murdock* the Court had indicated that the sheer weight of a flat tax could unconstitutionally crush evangelicalism. *Murdock*, 319 U.S. at 115.

Our precedent and the precedent of the New York Court of Appeals provides useful guidance to the proper evaluation of the effects of financial burdens imposed by land-use restrictions on the free exercise of religion. This topic necessarily requires development by state courts because the United States Supreme Court has never decided a land-use case involving a church's free exercise claim.[11] Indeed, until recently the Court had decided few cases involving burdens upon churches as institutions as opposed to burdens on individuals. *See Sumner v. First Baptist Church*, 97 Wn.2d 1, 16-17, 639 P.2d 1358 (1982) (Dolliver, J., dissenting) (describing the inapplicability of Supreme Court precedents cited by the majority).

In *Sumner v. First Baptist Church, supra*, this court held that the application of a building code ordinance to

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[10] One of the decisions in *Texas Monthly, Inc. v. Bullock, supra*, anticipated this development. Justices Brennan, Marshall, and Stevens limited *Murdock* in much the same way as the *Swaggart* decision. *Texas Monthly*, 109 S. Ct. at 893. But their views on that point did not command a majority until the *Swaggart* decision.

[11] The Court's decision in *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 99 L. Ed. 2d 534, 108 S. Ct. 1319 (1988) did not involve a church. In that case, the Supreme Court overturned a Ninth Circuit ruling forbidding upgrading a road and allowing a timber harvest which would interfere with Indian rituals linked to the land. The Court held that the free exercise clause does not restrain the government's use of government-owned land. It is thus of no use in deciding the case at bar.

a church school presented a free exercise claim. The plurality stated that the practical effect of uncompromising application of the building code would be to close down the church operated school. *Sumner*, 97 Wn.2d at 7. The dissent pointed out that it might not have this effect; instead, the defendant might choose to come up to code. *Sumner*, at 20. The court remanded the case to see if the church's needs might be accommodated with the need for safety. *Sumner*, at 8-10.

Sumner supports the proposition, implicit in *Murdock* and *Follett*, that regulations imposing financial burdens on churches can create a free exercise claim. Because the burden created in this case is so much greater than the burden imposed in *Sumner*, we must sustain the church's challenge in this case.

Land-use restrictions interfere with religious practice, not religious belief. *See* Comment, *Zoning Ordinances Affecting Churches: A Proposal for Expanded Free Exercise Protection*, 132 U. Pa. L. Rev. 1131, 1149 (1984). But religion is to some extent a communal matter. Ritual in some religions is inseparable from the spiritual experience of faith. An assembly of adherents is essential to creation of a unified community with a shared spiritual life. *See* Comment, at 1149-50. The free exercise clause protects religious practice as well as belief.

For these reasons, the law protects a church's ability to function as an institution. To some extent, it necessarily protects a church's finances. As the Supreme Court said in *Murdock*, "It is plain that a religious organization needs funds to remain a going concern." *Murdock*, 319 U.S. at 111. If a land-use restriction interferes markedly with a church's ability to perform its mission, the restriction may have to yield. *See Sumner* (land use regulation must allow church school to function at its present location); *State ex rel. Wenatchee Congregation of Jehovah's Witnesses v. Wenatchee*, 50 Wn.2d 378, 312

P.2d 195 (1957) (requiring special use permit for a church zoned out of a residential area); 82 Am. Jur. 2d *Zoning and Planning* § 154 (1976) (showing that most states have held zoning ordinances severely restricting church construction unconstitutional).

Although I think that our decision in *Sumner* compels us to rule in First Covenant's favor in the instant case, I write separately to urge that we apply a different approach in future cases. In light of *Swaggart*, we ought to require a very specific showing of hardship to justify exemption from land use restrictions in the future.

New York's courts require that landmark designation not prevent or seriously interfere with the carrying out of a chuch's religious and charitable purposes. *See Lutheran Church in Am. v. New York*, 35 N.Y.2d 121, 131, 316 N.E.2d 305, 359 N.Y.S.2d 7 (1974); *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 530, 496 N.E.2d 183, 505 N.Y.S.2d 24 (Mayer, J., dissenting), *cert. denied*, 479 U.S. 985 (1986).

We should adopt the New York test as the means of evaluating free exercise claims in land use. While imposition of a financial burden does not per se create a free exercise problem, the free exercise clause does not allow the state to impose financial burdens throttling religious practice. *See Swaggart*, 107 L. Ed. 2d at 811; *Murdock*, 319 U.S. at 111, 115.

The New York cases have not outlawed the application of land-use restrictions to churches. Instead, the cases permit relief from the strictures of ordinances when they genuinely interfere with a church's ability to perform its mission. For example, in *Westchester Reform Temple v. Brown*, 22 N.Y.2d 488, 239 N.E.2d 891, 293 N.Y.S.2d 297 (1968), the New York Court of Appeals required the zoning authorities to modify a setback requirement interfering with a needed expansion of a synagogue. The court relied heavily on the "undisputed fact . . . that the present facilities must be expanded to meet the increas-

ing needs of the congregation." *Westchester*, at 492. It rested its opinion on First Amendment grounds. *See also Jewish Reconstructionist Synagogue v. Roslyn Harbor*, 38 N.Y.2d 283, 342 N.E.2d 534, 379 N.Y.S.2d 747 (1975), *cert. denied*, 426 U.S. 950 (1976) (requiring special use permit for synagogue in residential area).

On the other hand, the New York Court of Appeals rejected the argument that a decline in market value alone constituted a free exercise violation in *Society for Ethical Culture v. Spatt*, 51 N.Y.2d 449, 456, 415 N.E.2d 922, 434 N.Y.S.2d 932 (1980) ("there simply is no constitutional requirement that a landowner always be allowed his property's most beneficial use"). Nevertheless, a landmark ordinance cannot be applied to prohibit a church from realizing sufficient profits to move or replace its building if it becomes unsuitable to its needs. *See Lutheran Church in Am. v. New York*, 35 N.Y.2d at 132 (prohibiting landmark designation when church wished to demolish outmoded building and obtain a new one).

Our decision in *Sumner* and the uncontested gross diminution of the value of its property justify the majority's decision in this case. In light of *Swaggart*, we should apply the New York approach to future cases.

DURHAM, J., and PEARSON, J. Pro Tem., concur with UTTER, J.

DOLLIVER, J. (dissenting)—The issue before the court is whether the Seattle landmarks preservation ordinance 106348 (Seattle Municipal Code 25.12), under the authority of which the church building owned by and housing the plaintiff has been declared a landmark (*see* Seattle ordinance 112425), unconstitutionally impinges upon plaintiff's right to its free exercise of religion. U.S. Const. amend. 1; *see also* Const. art. 1, § 11 (amend. 34). I would hold that it does not.

In contrast to the extended analysis of the majority, I believe the case can be decided easily and summarily.

Particularly in cases of this nature the court should render a decision only on those issues necessary to decide the case.

The pertinent language of the ordinance designating the First Covenant Church building as a landmark (Seattle ordinance 112425) is as follows:

> [N]othing herein shall prevent any alteration of the exterior when such alterations are necessitated by *changes in liturgy*, it being understood that the owner is the exclusive authority on liturgy and is the decisive party in determining what architectural changes are appropriate to the liturgy. When alterations necessitated by changes in liturgy are proposed, the owner shall advise the Landmarks Preservation Board in writing of the nature of the proposed alterations and, the Board shall issue a Certificate of Approval. Prior to the issuance of any Certificate, however, the Board and owner shall jointly explore such possible alternative design solutions as may be appropriate or necessary to preserve the designated features of the landmark.

(Italics mine.)

In its motion for summary judgment, defendant stated:

> Any changes that First Covenant chooses to make to the exterior of the structure *for religious purposes* are exempted from the normal landmarks review and approval requirement. As written, therefore, the imposed controls cannot interfere with First Covenant's free exercise of religion.

(Italics mine.)

By this statement, which is surely in the interest of the plaintiff, the City has given its interpretation of the term "liturgical exception" in the ordinance designating the First Covenant Church as a landmark. Thus, all this court need do is confirm the interpretation of the City, and the City will be bound to that position. If this is done, the ordinance on its face would not threaten the

use made of the building by the congregation or changes made in the exterior of the building so long as any uses or changes are for religious purposes. Since this, as I understand it, is the real concern of the plaintiff, if this approach were adopted, the case of the plaintiff would collapse.

As to other questions which plaintiff may have as to the validity of the ordinance, there is neither a justiciable controversy (*Spokane v. Taxpayers*, 111 Wn.2d 91, 758 P.2d 480 (1988)) nor is the matter ripe for litigation (*Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967)). Finally, to suggest that the requirement the church and landmarks board "shall jointly explore such possible alternative design solutions as may be appropriate or necessary to preserve the designated features of the landmark" (majority, at 408) is an excessive burden on the "free exercise of religion" is to trivialize the great protections of the First Amendment.

I would affirm the trial court. This court should by its opinion confirm the interpretation by the City of Seattle landmarks preservation ordinance 106348 and hold the ordinance does not apply to any changes made to the First Covenant Church for "religious purposes". The discussion of other issues raised by the landmarks preservation ordinance, including the effect of a decision by plaintiff to use or sell its property for "nonreligious purposes", should wait until another day.

BRACHTENBACH and SMITH, JJ., and BAKER, J. Pro Tem., concur with DOLLIVER, J.

THE SUPREME COURT OF WASHINGTON

No. 56377-2

FIRST COVENANT CHURCH OF SEATTLE WASHINGTON,
a non-profit corporation,
Appellant,

v.

THE CITY OF SEATTLE,
a Washington municipal corporation,
Respondent.

RULING ACCEPTING CERTIFICATION

[Filed Aug. 16, 1989]

By order dated August 7, 1989, this appeal was certified to this court by Division One of the Court of Appeals pursuant to RCW 2.06.030. Having reviewed the Court of Appeals file, I agree that the case warrants direct review under the cited statute. Certification is therefore accepted. Court of Appeals Cause No. 23217-7-I, in its entirety, is hereby transferred to this court for determination on the merits.

Dated at Olympia, Washington, August 16, 1989.

/s/ [Illegible]
Deputy Commissioner

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

No. 23217-7-I

FIRST COVENANT CHURCH OF SEATTLE WASHINGTON,
a non-profit corporation,
Appellant,

v.

THE CITY OF SEATTLE,
a Washington municipal corporation,
Respondent.

ORDER OF CERTIFICATION

[Filed Aug. 7, 1989]

A panel of the court has reviewed this case prior to argument and determined that it involves an issue of broad public import which requires prompt and ultimate determination, to wit:

> Is the Seattle Landmarks Preservation Ordinance unconstitutional under the First and Fourteenth Amendments?
>
> Is a constitutional challenge to the Seattle Landmarks Preservation Ordinance by a church premature until the ordinance is enforced?

This case having met the criteria of RCW 2.06.030(d); now, therefore, it is hereby

ORDERED that the above-entitled case is certified to the Supreme Court for such determination as that court deems appropriate.

Done this 7 day of August, 1989.

/s/ Coleman, C.J.

/s/ Webster, J.

/s/ [Illegible]

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR KING COUNTY

No. 86-2-01179-0

FIRST COVENANT CHURCH,
Plaintiff,

vs.

THE CITY OF SEATTLE,
Defendant.

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

THIS MATTER came on for hearing before the undersigned judge of the above-entitled court on the motions of plaintiff and defendant for summary judgment. Plaintiff was represented by their attorneys, A. T. Wendells and Gordon S. Clinton. Defendant was represented by its attorneys, Douglas N. Jewett, City Attorney, and James E. Fearn, Jr., Assistant.

Prior to making its decision, the court heard argument of counsel and considered the records and files herein including but not limited to all pleadings in this cause, the Affidavit of A. T. Wendells and the Affidavit of Karen Gordon in support of the Motions for Summary Judgment, and the authorities cited by Plaintiff and Defendant in their respective Memoranda.

Based upon the materials reviewed, and the argument of counsel, the court does hereby find that there are no material disputed factual isues and does further

ADJUDGE and DECREE that:

(1) Until, and unless the City denies Plaintiff's request for approval to alter or demolish the desig-

nated landmark, or otherwise develop its property, declaratory relief is inapprropriate to determine whether the ordinance imposing landmark controls on the property (No. 112425) is void for vagueness or effects a taking without just compensation;

(2) The criteria in the City's Landmarks Ordinance (No. 106348) is not void for vagueness;

(3) The plaintiff was not denied equal protection under the state or federal constitutions because the City did not provide economic incentives in the ordinance imposing landmark controls on plaintiff's property; and

(4) Declaratory relief is not the proper remedy for seeking judicial review of municipal land use decisions.

The court, therefore, Orders that defendant's Motion for Summary Judgment is granted, and plaintiff's complaint is hereby dismissed with prejudice and costs.

DONE IN OPEN COURT this 27th day of October, 1988.

/s/ Herbert J. Stevens
Judge

Presented by:

DOUGLAS N. JEWETT
City Attorney

By /s/ James E. Fearn, Jr.
JAMES E. FEARN, JR.
Assistant City Attorney

Attorneys for Defendant
Approved for Entry:

/s/ A. T. Wendells
A. T. WENDELLS
Attorney for Plaintiff

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR KING COUNTY

No. 86-2-01179-0

FIRST COVENANT CHURCH,
Plaintiff,

vs.

THE CITY OF SEATTLE,
Defendant.

FINDINGS OF UNDISPUTED FACTS AND ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

THIS MATTER came on for hearing on the defendant's motions dated August 25 and September 15, 1986 for a declaratory summary judgment.

The plaintiff urges that the designation of the First Covenant Church by the City of Seattle (Ordinance No. 11245, September 24, 1985) as a landmark and subject to the requirements and regulations of Seattle Landmarks Preservation Ordinance No. 1-06348 is unconstitutional and void because (1) the Seattle Landmarks Preservation Ordinance was not intended to apply to churches and (b) that application of the Landmark's Preservation Ordinance to any active church constitutes an interference with the free exercise of religion contrary to the First Amendment of the United States Constitution and Article 1, Section 11 of the Washington Constitution.

Based upon the records and files in these proceedings and the submissions of parties and the statements of counsel the court finds the following:

UNDISPUTED FACTS

1. The plaintiff presently uses the property which is the subject matter of these proceedings and which was declared to be a landmark which is subject to the city's Landmark Preservation Ordinance exclusively for religious purposes.

2. The plaintiff presently has no plans or proposals for additions or modifications to the structure.

3. The plaintiff church was duly designated, over objections of the plaintiff and in the course of procedures for adoption of Seattle Ordinance No. 112425 as a landmark.

4. The underlying ordinance, the city's Landmark Preservation Ordinance (Ordinance No. 106345 and the subsequent ordinance declaring the plaintiff church to be a "landmark" were duly enacted by the City Council.

On the basis of the undisputed facts and giving due consideration to the texts of the ordinances which are now part of the record of these proceedings and upon due consideration of the arguments of counsel and the written memorandum submitted by counsel in support of the respective positions of the parties the court concludes as follows:

1. Although the governing ordinances do not single out "churches" by name, reasonable construction of the ordinance leads to the conclusion that church buildings are reasonably subject to the requirements of the Landmark Preservation Ordinance. The ordinance is clearly directed towards all buildings and structures more than twenty five years old. The fact that the ordinance provides for "economic incentives" as consideration for im-

position of controls on a designated landmark site or landmark does not establish that the ordinance was not intended to apply to churches. Section 10.03.(9) defining economic incentives as ". . . such compensation, rights, privileges or combinations thereof which the council may be authorized to grant . . ." as consideration for imposition of controls . . ." does not necessarily rule out the possibility of compensation for loss of property value, if any, which may or may not result as a function of classification as a "landmark." In all other respects the ordinance is broad and comprehensive and consistent with the conclusion that structures of the kind owned by the plaintiff were intended to be and are subject to the Landmark Preservation Ordinance.

2. Unless and until the city undertakes to apply the ordinance in a manner that in some way impinges upon the undoubted constitutional right of the plaintiff to operate its religious property without interference from the city, the question of whether or not the effect of the ordinances in question constitute an interference with the plaintiff's rights of religious freedom under the First Amendment of the United States Constitution and Article 1, Section 11 of the Washington Constitution is premature.

The mere fact that the ordinance might possibly be construed as requiring the plaintiff to submit plans for remodeling does not necessarily force the conclusion that the city's actions in the future will impinge on these constitutional rights of religious freedom. Whether any future action by the city with respect to any future hypothetical decision of the plaintiff church impinges upon a constitutional right, under the First Amendment or of the Federal Constitution or Article 1, Section 11 of the Washington Constitution,, must necessarily depend upon the facts and circumstances presented at that time.

The plaintiff takes great pains to emphasize that this is not a zoning case and that even if the city has some

police power with respect to public safety and building code authorizations under other ordinances, the very existence of the Landmark Preservation Ordinance may subject the church to certain procedural requirements in the future. This is also too abstract and premature to justify a judicial decision prior to the time that all necessary facts have been developed which could well affect the outcome.

The plaintiff has contended that the passage of the ordinance of designation itself, establishing controls, constitutes an unconstitutional interference with its religious freedom. This court rejects that contention.

On the basis of the foregoing Findings of Fact and Conclusions of Law it is hereby ORDERED, JUDGED AND DECREED:

That the plaintiff's motion for summary judgment on the foregoing grounds is hereby denied and defendant's motion is granted without prejudice to the plaintiff's remaining contentions of fact and law.

DATED this 1 day of October, 1987.

/s/ John W. Riley
JOHN W. RILEY
Judge

Presented by:

DOUGLAS N. JEWETT
City Attorney

By /s/ James E. Fearn, Jr.
JAMES E. FEARN, JR.
Assistant City Attorney

Attorneys for Defendant

Approved as to Form; Notice of
Presentation Waived:

/s/ A. T. Wendells
A. T. WENDELLS

and

CLINTON, FLECK & GLEIN

By /s/ Gordon S. Clinton
GORDON S. CLINTON

Attorneys for Plaintiff

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR KING COUNTY

No. 86-2-01179-0

FIRST COVENANT CHURCH,
Plaintiff,
vs.
THE CITY OF SEATTLE,
Defendant.

FINDINGS OF UNDISPUTED FACTS AND ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter came on for hearing on the plaintiff's motion dated August 25, 1986 for the declaratory summary judgment.

The plaintiff urges that the designation of the First Covenant Church by the City of Seattle (Ordinance No. 11245, September 24, 1985) as a landmark and subject to the requirements and regulations of Seattle Landmarks Preservation Ordinance No. 1-06348 is unconstitutional and void because (1) the Seattle Landmarks Preservation Ordinance was not intended to apply to churches and (b) that application of the Landmark's Preservation Ordinance to any active church constitutes an interference with the free exercise of religion contrary to the First Amendment of the United States Constitution and Article 1, Section 11 of the Washington Constitution.

Based upon the records and files in these proceedings and the submissions of parties and the statements of counsel the court finds the following:

UNDISPUTED FACTS

1. The plaintiff presently uses the property which is the subject matter of these proceedings and which was declared to be a landmark which is subject to the city's Landmark Preservation Ordinance exclusively for religious purposes.

2. The plaintiff presently has no plans or proposals for additions or modifications to the structure.

3. The plaintiff church was duly designated, over objections of the plaintiff and in the course of procedures for adoption of Seattle Ordinance No. 112425 as a landmark.

4. The underlying ordinance, the city's Landmark Preservation Ordinance (Ordinance No. 106345) and the subsequent ordinance declaring the plaintiff church to be a "landmark" were duly enacted by the City Council.

On the basis of the undisputed facts and giving due consideration to the texts of the ordinances which are now part of the record of these proceedings and upon due consideration of the arguments of counsel and the written memorandum submitted by counsel in support of the respective positions of the parties the court concludes as follows:

1. Although the governing ordinances do not single out "churches" by name, reasonable construction of the ordinance leads to the conclusion that church buildings are reasonably subject to the requirements of the Landmark Preservation Ordinance. The ordinance is clearly directed towards all buildings and structures more than twenty-five years old. The fact that the ordinance provides for "economic incentives" as consideration for imposition of controls on a designated landmark site or landmark does not establish that the ordinance was not intended to apply to churches. Section 1.03.(9) defining economic incentives as ". . . such compensation, rights, privileges or

combinations thereof which the council may be authorized to grant . . ." as consideration for imposition of controls . . ." does not necessarily rule out the possiblity of compensation for loss of property value, if any, which may or may not result as a function of classification as a "landmark." In all other respects the ordinance is broad and comprehensive and consistent with the conclusion that structures of the kind owned by the plaintiff were intended to be and are subject to the Landmark Preservation Ordinance.

2. Unless and until the city undertakes to apply the ordinance in a manner that in some way impinges upon the undoubted constitutional right of the plaintiff to operate its religious property without interference from the city, the question of whether or not the effect of the ordinances in question constitute and interference with the plaintiff's rights of religious freedom under the First Amendment of the United States Constitution and Article 1, Section 11 of the Washington Constitution is premature.

The mere fact that the ordinance might possibly be construed as requiring the plaintiff to submit plans for remodeling does not necessarily force the conclusion that the city's actions in the future will impinge on these constitutional rights of religious freedom. Whether any future action by the city with respect to any future hypothetical decision of the plaintiff church impinges upon a constitutional right, under the First Amendment or of the Federal Constitution or Article 1, Section 11 of the Washington Constitution, must necessarily depend upon the facts and circumstances presented at that time.

The plaintiff takes great pains to emphasize that this is not a zoning case and that even if the city has some police power with respect to public safety and building code authorizations under other ordinances, the very existence of the Landmark Preservation Ordinance may

subject the church to certain procedural requirements in the future. This is also too abstract and premature to justify a judicial decision prior to the time that all neces-sary facts have been developed which could well affect the outcome.

On the basis of the foregoing Findings of Fact and Conclusions of Law it is hereby ORDERED, JUDGED and DECRRED:

That the plaintiff's motion for summary judgment on the foregoing grounds is hereby denied without prejudice to the plaintiff's remaining contentions of fact and law.

DATED this 8th day of October, 1986.

/s/ John W. Riley
JOHN W. RILEY
Judge

THE SUPREME COURT OF WASHINGTON

No. 56377-2

FIRST COVENANT CHURCH OF SEATTLE, WASHINGTON,
Appellant,

v.

THE CITY OF SEATTLE,
Respondent.

ORDER DENYING MOTION FOR RECONSIDERATION

The Court having decided by majority vote that the respondent's motion for reconsideration should be denied.

It is ordered that the motion be and it hereby is denied.

Dated this 12th day of September, 1990.

/s/ [Illegible]
Chief Justice

Chapter 25.12

LANDMARKS PRESERVATION

Subchapter I Title and Purpose

25.12.010 Short title.

This chapter may be cited as the "Landmarks Preservation Ordinance."

(Ord. 106348 § 1.01, 1977.)

25.12.020 Purpose and declaration of policy.

A. The City's legislative authority finds that the protection, enhancement, perpetuation and use of sites, improvements and objects of historical, cultural, architectural, engineering or geographic significance, located within the City, are required in the interest of the prosperity, civic pride and general welfare of the people; and further finds that the economic, cultural and aesthetic standing of this City cannot be maintained or enhanced by disregarding the heritage of the City and by allowing the unnecessary destruction or defacement of such cultural assets.

B. The purposes of this chapter are: (1) to designate, preserve, protect, enhance and perpetuate those sites, improvements and objects which reflect significant elements of the City's cultural, aesthetic, social, economic, political, architectural, engineering, historic or other heritage, consistent with the established long-term goals and policies of the City; (2) to foster civic pride in the beauty and accomplishments of the past; (3) to stabilize or improve the aesthetic and economic vitality and values of such sites, improvements and objects; (4) to protect and enhance the City's attraction to tourists and visitors; (5) to promote the use of outstanding sites, improvements and objects for the education, stimulation and welfare of the people of the City; and (6) to promote and encourage

continued private ownership and use of such sites, improvements and objects now so owned and used, to the extent that the objectives listed above can be attained under such a policy.

(Ord. 106348 § 1.02, 1977.)

Subchapter II Definitions

25.12.030 Definitions generally.

The words and terms set out in this subchapter, when used in this chapter, unless a different meaning clearly appears from the context shall mean as follows.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03 (part), 1977.)

25.12.040 Alteration.

"Alteration" is any construction, modification, demolition, restoration or remodeling for which a permit from the Director of Construction and Land Use is required.

(Ord. 109125 § 16 (part), 1980: Ord. 106348 § 1.03(1), 1977.)

25.12.050 Approval of designation.

"Approval of designation" is final action by the Landmarks Preservation Board identifying an object, improvement or site as a landmark or landmark site.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(2), 1977.)

25.12.060 Approval of nomination.

"Approval of nomination" is an action by the Landmarks Preservation Board approving a nomination, in whole or in part, for further designation proceedings.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(3), 1977.)

25.12.070 Board.

"Board" is the Landmarks Preservation Board.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(4), 1977.)

25.12.080 Certificate of approval.

"Certificate of approval" is written authorization which must be issued by the Board before any alteration or significant change may be made to the controlled features of a landmark or landmark site, or during the pendency of designation proceedings, to a site, improvement or object after its nomination has been approved by the Board for further proceedings.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(5), 1977.)

25.12.090 Controls.

"Controls" are such specific restrictions as may be imposed by a designating ordinance, upon the alteration or the making of significant changes of specific features or characteristics of a landmark site or landmark that are designated for preservation by such designating ordinance.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(6), 1977.)

25.12.100 Council.

"Council" is the City Council of the City of Seattle.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(7), 1977.)

25.12.110 Designating ordinance.

"Designating ordinance" is an ordinance enacted pursuant to this chapter for the purpose of declaring an object, improvement or site a landmark, or a landmark site, and specifying the controls and any economic incentives applicable thereto, and shall include any ordinance

designating a landmark in accordance with Ordinance 102229.[1]

(Ord. 109125 § 16 (part), 1980: Ord. 160348 § 1.03(8), 1977.)

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[1] Editor's Note: Ord. 102229 is the previous landmarks preservation ordinance.

25.12.115 Director of Construction and Land Use.

"Director of Construction and Land Use" is the Director of the Department of Construction and Land Use of the City or such other official as may be designated from time to time to issue permits for construction, alteration, reconstruction, or demolition of improvements upon real property in the City.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(9), 1977.)

25.12.120 Economic incentives.

"Economic incentives" are such compensation, rights, or privileges or combination thereof, which the Council, or other public body or agency, by virtue of applicable present or future legislation, may be authorized to grant to or obtain for the owner as consideration for the imposition of controls on a designated landmark site or landmark.

Examples of econmic incentives include tax relief, conditional use permits, rezoning, street vacation, planned unit development, transfer of development rights, facade easements, named gifts, preferential leasing policies, private or public grants-in-aid, beneficial placement of public improvements, or amenities, or the like.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(10), 1977.)

25.12.130 Hearing Examiner.

"Hearing Examiner" means any person authorized to act as a Hearing Examiner pursuant to the Administrative Code of the City (Ordinance 102228)[1] or any ordinance amendatory or successor thereto.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(11), 1980.)

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[1] Editor's Note: The Administrative Code is codified in Chapter 3.02 of this Code.

25.12.140 Improvement.

"Improvement" is any building, structure, or other object constituting a physical improvement of real property.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(12), 1977.)

25.12.150 Interested person of record.

"Interested person of record" includes any individual, corporation, partnership or association which notifies the Board in writing of its interest in any matter before the Board.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(13), 1977.)

25.12.160 Landmark.

"Landmark" is an improvement or object designated as a landmark pursuant to this chapter, or pursuant to Ordinance 102229.[1]

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(14), 1977.)

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[1] Editor's Note: Ord. 102229 is the previous landmarks preservation ordinance.

25.12.170 Landmark site.

"Landmark site" is a site designated as a landmark site pursuant to this chapter.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(15), 1977.)

25.12.180 Nomination.

"Nomination" is the act of proposing that any object, site or improvement be designated a landmark or landmark site.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(16), 1980.)

25.12.190 Object.

"Object" is any tangible thing, including any ship, which may or may not be attached to real property.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(17), 1980.)

25.12.200 Owner.

"Owner" is a person having a fee simple interest, a substantial beneficial interest of record or a substantial beneficial interest known to the Board in an object, site or improvement.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(18), 1977.)

25.12.210 Party of record.

"Party of record" includes the Board, the owner, the person in charge, and the nominator of any proposed landmark or landmark site, and the Hearing Examiner, when appropriate.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(19), 1977.)

25.12.220 Person.

"Person" is an individual, partnership, corporation, group or association.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(20), 1977.)

25.12.230 Person in charge.

"Person in charge" is the person or persons in possession of an object or of an improved lot or parcel including but not limited to a mortgagee or vendee in possession, an assignee of rents, a receiver, executor, trustee, lessee, tenant, agent, or any other person directly or indirectly in control of an object or of an improved lot or parcel of real property.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(21), 1977.)

25.12.240 Significant change.

"Significant change" is any change in appearance not requiring a permit from the Director of Construction and Land Use, but for which a certificate of approval is expressly required by a Board approval of nomination, a Board report on designation, or a designating ordinance.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(22), 1977.)

25.12.250 Site.

"Site" is any area of land which is unimproved except for trees, shrubs, and/or plants.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(23), 1977.)

25.12.260 Superintendent.

"Superintendent" is the Director of Construction and Land Use of the City or such other official as may be

designated from time to time to issue permits for construction, alteration, reconstruction, or demolition of improvements upon real property in the City.

(Ord. 109125 § 16(part), 1980: Ord. 106348 § 1.03(24), 1977.)

Subchapter III Landmarks Preservation Board

25.12.270 Creation.

There is created the Landmarks Preservation Board (hereinafter called the "Board") which shall consist of eleven (11) members. The membership of the Board shall consist of at least two (2) architects, (one (1) of whom may be a landscape architect), two (2) historians, one (1) representative from the City Planning Commission, one (1) structural engineer, one (1) representative from the field of real estate management, and one (1) representative from the field of finance. Three (3) additional members shall also be appointed without regard to occupation or affiliation. All Board members shall have a demonstrated sympathy with the purposes of this chapter.

(Ord. 106348 § 2.01(a), 1977.)

25.12.280 Membership.

Members of the Landmarks Preservation Board established under Ordinance 102229 [1] are appointed members of the Board established pursuant to this chapter to serve for the remainder of the terms to which they were originally appointed, and in addition, one (1) new member shall be appointed for a three (3) year term and one (1) new member shall be appointed for a two (2) year term. Thereafter all members of the Board shall be appointed by the Mayor, subject to confirmation by the Council, for a term of three (3) years, which appointments shall be

made in such a manner that the composition specified in this subchapter is maintained.

(Ord. 106348 § 2.01(b), 1977.)

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[1] Editors Note: Ord. 102229 is the previous landmarks preservation ordinance.

25.12.290 Vacancy filling.

In the event of a vacancy, an appointment shall be made to fill the vacancy in the same manner as if at the beginning of the term. The person appointed to fill the vacancy shall hold for the unexpired term, and if the vacancy being filled was occupied by a person meeting one (1) of the enumerated qualifications, the newly appointed member shall meet that same qualification. No member shall serve for more than two (2) terms consecutively; provided that for the purpose of this limitation a member shall be deemed to have served one (1) term if such member resigns after being appointed for any period of time, and provided further that "one (1) term" shall include an unexpired term of two (2) years or more. Members of the Board shall serve without compensation.

(Ord. 106348 § 2.01(c), 1977.)

25.12.300 Rules and regulations.

The Board shall elect a Chairperson from among its members, and shall within six (6) months adopt in accordance with the Administrative Code (Ordinance 102228),[1] and file with the City Comptroller rules and regulations, including a code of ethics for its members, for its organization and procedures consistent with this chapter. The Board shall not conduct any public hearing required under this chapter until rules and regulations have been filed.

(Ord. 106348 § 2.02(a), 1977.)

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[1] Editor's Note: The Administrative Code is codified in Chapter 3.02 of this Code.

25.12.310 Quorum—Voting.

A majority of the current appointed and confirmed members of the Board shall constitute a quorum for the transaction of business. All official actions of the Board, with the exception of votes on approval of designation, shall require a majority vote of the members present and voting. Votes on approval of designation shall require a majority vote of the then current appointed and confirmed members of the Board. No member shall be eligible to vote upon any matter required by this chapter to be determined after a hearing unless that member has attended the hearing or familiarized him or herself with the record.

(Ord. 106348 § 2.02(b), 1977.)

25.12.320 Staff—Historic Preservation Officer.

The Director of the Department of Community Development shall provide adequate staff support to the Landmarks Preservation Board and shall assign a member of the Department's staff to act as Historic Preservation Officer. Under the direction of the Board, the Historic Preservation Officer shall be the custodian of the Board's records, conduct official correspondence, assist in organizing and supervising the Landmarks Preservation Board, conduct official correspondence, organize and supervise the Board staff and the clerical and technical work of the Board to extent required to administer this chapter. In addition, the Historic Preservation Officer shall:

A. Carry out, assist and collaborate the studies and programs designed to identify and evaluate objects, improvements and sites worthy of preservation:

B. Consult with and consider the ideas and recommendations of civic groups, public agencies, and citizens interested in historic preservation;

C. Inspect and investigate objects, improvements and sites which are believed worthy of preservation;

D. Officially recognize design excellence in the rehabilitation of objects, improvements and other features deemed deserving of official recognition although not designated as landmark sites or landmarks and encourage appropriate measures for such recognition;

E. Disseminate information to the public concerning those objects, improvements and sites deemed worthy of preservation, and encourage and advise owners in the protection, enhancement and perpetuation of such objects, improvements and sites;

F. Consider methods other than those provided for in this chapter for encouraging and achieving historical preservation, and make appropriate recommendations to the Council and to other bodies and agencies, both public and private;

G. Recommend such policies, rules and regulations for adoption by the Board as are deemed necessary to carry out the purposes of this chapter;

H. Subject to such limitations and within such standards as the Board may establish from time to time, grant certificates of approval all without prejudice to the right of the owner at any time to apply directly to the Board for its consideration and action on such matters.

(Ord. 106348 § 2.03, 1977.)

25.12.330 Board meetings.

All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the action of the Board upon each question, and shall keep records of all official actions taken by it, all of which shall be filed in the office of the Historic Preservation Officer and shall be public records.

(Ord. 106348 § 2.04, 1977.)

25.12.340 Electronic record of hearings.

At all hearings before the Board, all oral proceedings shall be electronically recorded. Such proceedings may also be recorded stenographically by a court reporter if any interested person at his or her expense shall provide a court reporter for that purpose. A copy of the record or any part thereof, whether recorded stenographically or electronically, shall be transcribed and furnished to any person upon request therefor and payment of the reasonable costs thereof.

(Ord. 106348 § 2.05, 1977.)

Subchapter IV Designation of Landmark Sites

25.12.350 Standards for designation.

An object, site or improvement which is more than twenty-five (25) years old may be designated for preservation as a landmark site or landmark if it has signicant character, interest or value, as part of the development, heritage or cultural characteristics of the City, state, or nation and if it falls into one (1) of the following categories:

A. It is the location of, or is associated in a significant way with, an historic event with a significant effect upon the community, City, state, or nation; or

B. It is associated in a significant way with the life of a person important in the history of the City, state, or nation; or

C. It is associated in a significant way with a significant aspect of the cultural, political, or economic heritage of the community, City, state or nation; or

D. It embodies the distinctive visible characteristics of an architectural style, or period, or of a method of construction; or

E. It is an outstanding work of a designer or builder; or

F. Because of its prominence of spatial location, contrasts of siting, age, or scale, it is an easily identifiable visual feature of its neighborhood or the City and contributes to the distinctive quality or identity of such neighborhood or the City.

(Ord. 106348 § 3.01, 1977.)

25.12.360 Separate nomination and designation of site and object or improvement.

The nomination or designation of a site as a landmark site shall not constitute nomination or designation of any object or improvement located on the site as a landmark unless the object or improvement is nominated or designated as a landmark. The nomination or designation of an object or improvement as a landmark shall not constitute nomination or designation of the site on which the object or improvement is located as a landmark site unless the site is nominated or designated as a landmark site.

(Ord. 106348 § 3.02, 1977.)

25.12.370 Nomination.

Any person including the Historic Preservation Officer and any member of the Board may nominate any site, improvement or object for designation as a landmark or landmark site. Nominations may be made on official nomination forms provided by the Historic Preservation Officer, shall be filed with the Historic Preservation Officer, and shall include all data required by the Board. Nominations found to be in order by the Historic Preservation Officer shall be considered by the Board at a public meeting. The Historic Preservation Officer or the Board may amend or complete any nomination. A copy

of any nomination and of any amendments thereto shall be given the owner promptly.

(Ord. 106348 § 4.01, 1977.)

25.12.380 Notice of Board meeting on approval of nomination.

The Board may approve a nomination for further designation proceedings only at a public meeting. The Board shall make a reasonable effort to serve the owner of a nominated site, improvement or object with notice of any Board meeting at which such nomination shall be considered for approval by the Board, however, failure to serve such notice shall not invalidate any proceedings with respect to such nomination. Neither the attendance, and participation of the owner at the meeting to consider the nomination nor the owner's failure to so attend or participate shall prejudice the right of the owner to resist designation or the imposition of controls if the nomination is approved.

(Ord. 106348 § 5.01, 1977.)

25.12.390 Board approval of nomination.

A. If the Board, in whole or in part, approves a nomination for further designation proceedings, it shall in such approval:

1. Specify the legal description of the site, the particular features and/or characteristics proposed to be preserved, and such other description of the site, improvement or object as it deems appropriate;

2. Set a date, which is not less than thirty (30) nor more than forty-five (45) days from the date of approval of nomination, at which a public hearing on approval of designation shall be held as provided in Section 25.12.420.

B. If the Board approves a nomination, the provisions of Sections 25.12.670 through 25.12.780 shall apply.

(Ord. 106348 § 5.02, 1977.)

25.12.400 Notification of approval of nomination.

If the Board approves a nomination in whole or in part for further designation proceedings, the Historic Preservation Office shall within three (3) working days file a written notice of such action with the Superintendent and serve a copy of the same on the owner and interested persons of record. Such written notice shall include:

A. A copy of such approval of nomination;

B. A statement that while proceedings pursuant to this chapter are pending, and thereafter if a designating ordinance is enacted, a certificate of approval must be obtained before anyone may: (1) make alterations or significant changes to specific features or characteristics of the site, improvement or object suggested for preservation in the approval of nomination or thereafter specified in the report on approval of designation, or set forth in the decision of the Hearing Examiner; or (2) make alterations or significant changes to specific controlled features or characteristics of such landmark site or landmark specified in a designating ordinance; and

C. A statement of the date and time of the Board hearing on approval of designation;

D. A statement that all proceedings to review the action of the Board at the hearing on approval of designation will be based on the record made at such hearing and that no further right to present evidence on the issue of designation is afforded pursuant to this chapter.

(Ord. 106348 § 5.03, 1977.)

25.12.410 Disapproval of nomination.

If the Board disapproves the nomination, the proceedings shall terminate as provided in Section 25.12.850 A, and the Board shall set forth its reasons why approval of nomination is not warranted.

(Ord. 106348 § 5.04, 1977.)

25.12.420 Board hearing on approval of designation.

Except as otherwise provided in Section 25.12.470 the Board may approve or deny designation of a site, improvement or object only at a public hearing. At the hearing on approval of designation the Board shall receive evidence and hear arguments on whether the site, improvement or object meets the criteria for designation of landmarks and landmark sites specified in Section 25.12.350 and merits designation as a landmark or landmark site.

(Ord. 106348 § 6.01, 1977.)

25.12.430 Board action on approval of designation.

Whenever the Board approves designation of all or any portion of the site, improvement or object under consideration as a landmark or landmark site, it shall within fourteen (14) days issue a written report on designation which shall set forth:

A. The legal description of the site, the specific features and/or characteristics to be preserved, and such other description of the site, improvement or object as it deems appropriate;

B. Its reasons, analysis and conclusions supporting subsection A with specific reference to the criteria set forth in Section 25.12.350.

(Ord. 106348 § 6.02, 1977.)

25.12.440 Notice of report on designation.

A copy of the Board's report on designation shall be served on the owner and mailed to interested persons of record within three (3) working days after it is issued. If the Board acts to approve designation, the owner, at the time of service of the report shall also be served with a notice that:

A. States a date, which is not later than seventy-five (75) days after mailing of the report on designation, when the Board will consider controls and incentives, if any, to be applied for preservation of specific features or characteristics of the site, improvement or object in question.

B. Requests the owner to consult and confer with the Board staff to develop and agree upon controls and incentives; and

C. Informs the owner of the procedures of Sections 25.12.490 through 25.12.520.

(Ord. 106348 § 6.03, 1977.)

25.12.450 Disapproval of designation.

If the Board disapproves designation, the proceedings shall terminate as provided in Section 25.12.850A and the Board shall set forth its reasons why approval of designation is not warranted.

(Ord. 106348 § 6.04, 1977.)

25.12.460 Consultation with owner.

Following Board approval of nomination an owner may affirmatively indicate a desire to confer and consult with the Board and Board staff with a view toward reaching agreement on specific features and characteristics of the site, improvement or object to be preserved and methods of achieving such preservation, including controls and incentives.

(Ord. 106348 § 7.01, 1977.)

25.12.470 Procedure.

Upon receipt of written notice that the owner desires to confer and consult with the Board and Board staff under the provisions of Section 25.12.460, the Board staff and owner shall develop a schedule for such consultation

which shall not be subject to any time limitations set forth in other sections of this chapter. The Board shall establish procedures for consent proceedings under Sections 25.12.460 through 25.12.480 which shall insure that the Board's consideration of approval of designation and the Board's recommendation on controls and incentives are separate actions. If, for any reason, the Board and owner fail to reach agreement under this procedure and when either party informs the other in writing that an impasse has been reached, Section 25.12.520 shall apply.

(Ord. 106348 § 7.02, 1977.)

25.12.480 Requests for Council approval.

All requests for Council approval of reports and recommendations made pursuant to Sections 25.12.460 and 25.12.470 shall include a statement that such report or recommendation is made under the provisions of said sections and shall include a written statement from the owner concurring in such report or recommendation.

(Ord. 106348 § 7.03, 1977.)

Subchapter V Controls and Incentives

25.12.490 Negotiation with owner.

Promptly after service on the owner of the Board's report on designation, the Board staff shall commence to negotiate with the owner the application of controls on the site, improvement, or object, designed to preserve the specific features or characteristics identified in the Board's report on designation and the application of economic incentives, if any, to the owner of the site, improvement or object. If within fifteen (15) days of the commencement of the negotiation period, the owner fails to contact the Board staff, or notifies the staff that the owner declines to negotiate controls and incentives, the staff shall promptly prepare and transmit to the Board its recommendations for controls and incentives for the

subject site, improvement or object to be considered at a public meeting at the time and place specified in the notice of report on designation.

(Ord. 106348 § 8.01(a), 1977.)

25.12.500 Negotiations—Procedure and time requirements.

The negotiation period may run for a maximum of seventy-five (75) days from the date of service of the Board's report on designation on the owner. The negotiations shall terminate if either party concludes that an impasse has been reached and so notifies the other party in writing and if the other part does not object within seven (7) days after receipt of such notice. If the owner and the Board staff reach written agreement within the period allotted for negotiation, the Board staff shall promptly submit the agreement to the Board for approval at a Board meeting to be held not later than twenty (20) days after the written agreement is reached, or within such further time as the Board and owner may stipulate in writing. Notice of such Board meeting shall be served on the owner and mailed to interested persons of record at least fifteen (15) days prior to such meeting. Within three (3) working days after such meeting the Board shall serve upon the owner, and mail to interested persons of record, notice of its approval or disapproval of the agreement and specify the reasons therefor.

(Ord. 106348 § 8.01(b), 1977.)

25.12.510 Effect of Board approval of agreement.

If the agreement on controls and incentives between the Board staff and owner is approved by the Board, the Board shall transmit the agreement to the Council with a request for Council action pursuant to Sections 25.12.650 and 25.12.660.

(Ord. 106348 § 8.02, 1977.)

25.12.520 Effect of failure to agree or disapproval of agreement.

In the event the Board staff and the owner are unable to reach an agreement by negotiation, or in the event the agreement reached is disapproved by the Board, the Board shall file its recommendation on controls and economic incentives, if any, with the Hearing Examiner and serve same on the owner and the owner shall have an opportunity to file objections thereto. The controls proposed in such recommendation shall relate to the specific feature or features of the site, improvement or object which are to be preserved. The recommendation shall set forth the reasons and the need for each proposed specific control and for any proposed economic incentive and shall, in addition, state the circumstances under which a certificate of approval shall be required with respect to any alteration or significant change to the site, improvement or object if the proposed controls are imposed. The Board may hold a public hearing prior to the making of its recommendation.

(Ord. 106348 § 8.03, 1977.)

25.12.530 Filing of recommendation and objections with Hearing Examiner.

As provided in Section 25.12.520, in the event of a failure to agree on proposed controls and incentives or in the event of disapproval of an agreement, the Board shall file with the Hearing Examiner and serve upon the owner recommendations for proposed controls and incentives and the owner may file objections thereto. The recommendation of the Board shall be filed not later than one hundred eighty-five (185) days after the approval of nomination and not later than fifteen (15) days after the expiration of the maximum period permitted for negotiations if no written agreement was signed by the Board staff and the owner, or if an agreement, was signed within fifteen (15) days after the time has ex-

pired for the Board to approve or disapprove such a written agreement pursuant to Section 25.12.500. The owner's objections shall be filed not later than fifteen (15) days after receipt of the Board's recommendation on proposed controls and incentives. For good and sufficient cause shown by either the Board or owner, the Hearing Examiner may grant an extension of time not to exceed thirty (30) days. Any interested person of record may file with the Hearing Examiner written objections to the Board's recommendations on controls and economic incentives.

(Ord. 106348 § 9.01, 1977.)

25.12.540 Scheduling of hearing.

After the Board's recommendations and the owner's objections, if any, are filed with the Hearing Examiner, the Hearing Examiner shall set the matter for a hearing which shall be held within seventy (70) days of the receipt of the owners objections or the receipt of the Board's recommendations, whichever is later, and promptly notify the Board, owner and all interested persons of record of the date and time for the hearing.

(Ord. 106348 § 9.02, 1977.)

25.12.550 Expert advice.

After reasonable notice to the Board and owner, the Hearing Examiner may appoint an expert or experts to provide advice concerning the economic effects of the proposed controls and economic incentives.

(Ord. 106348 § 9.03, 1977.)

25.12.560 Hearing Examiner procedure.

Proceedings before the Hearing Examiner shall be in accordance with the procedures for hearings in contested cases pursuant to the Administrative Code (Ordinance

102228)[1], except as such procedures are modified by this chapter. Any person may testify at the hearing.

(Ord. 106348 § 9.04, 1977.)

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[1] Editor's Note: The Administrative Code is codified in Chapter 3.02 of this Code.

25.12.570 Basis for Hearing Examiner's recommendation.

On the basis of all the evidence presented at a hearing, the Hearing Examiner shall determine whether to recommend all or any of the proposed controls and economic incentives, and/or whether to recommend a modified version of any of the proposed controls or incentives. The Hearing Examiner, except upon written agreement with the owner, shall not recommend any control which directly regulates population density; provided that the Hearing Examiner may recommend a control which indirectly affects density by controlling a specific feature of a site, improvement or object. The Hearing Examiner shall not recommend any control which is not set forth with adequate specificity, or which is inconsistent with any provision of this chapter, or for which the reason and need is not established with respect to the specific features and characteristics of the site, improvement or object to be preserved, or which requires that the site, improvement or object be devoted to any particular use, or which imposes any use restrictions, or any control or incentive if the effect of such control, incentive or combination thereof would be to prevent the owner from realizing a reasonable return on the site, improvement, or object.

(Ord. 106348 § 9.05(a), 1977.)

25.12.580 Owners shall not be deprived of reasonable economic use.

In no event shall the recommendation of the Hearing Examiner or any proceedings under or application of this

chapter deprive any owner of a site, improvement or object of a reasonable economic use of such site, improvement or object.

(Ord. 106348 § 9.05(b), 1977.)

25.12.590 Factors to be considered.

Only the following factors may be considered in determining the reasonable return on a site, improvement or object:

A. The market value of the site, improvement or object in its existing condition taking into consideration the ability to maintain, operate or rehabilitate the site, improvement or object:

1. Before the imposition of controls or incentives, and

2. After the imposition of proposed specific controls and/or incentives;

B. The owner's yearly net return on the site, improvement or object, to the extent available, during the five (5) years prior to the imposition of specific controls and/or incentives;

C. Estimates of the owner's future net yearly return on the site, improvement or object with and without the imposition of proposed specific controls and/or incentives;

D. The net return and the rate of return necessary to attract capital for investment:

1. In such site, improvement or object and in the land on which the site, improvement or object is situated after the imposition of the proposed specific controls and/or incentives, if such information is available, or, if such information is not available.

2. In a comparable site, improvement or object and in the land on which such comparable site, improvement or object is situated; and

E. The net return and rate of return realized on comparable sites, improvements or objects not subject to controls imposed pursuant to this chapter.

(Ord. 106348 § 9.05(c), 1977.)

25.12.600 Information.

It shall be the responsibility of the owner or person in charge to provide the Hearing Examiner with such information as is necessary and sufficient to determine yearly net return under Section 25.12.590 B and C.

(Ord. 106348 § 9.05(d), 1977.)

25.12.610 Hearing Examiner recommendations—Referral to Council.

Within thirty (30) days after the hearing, the Hearing Examiner shall serve on the Board and the owner and file with the Council for such action as the Council may deem appropriate, a decision setting forth a recommendation of the proposed controls and any economic incentives, findings with respect to the specific controls so recommended, the reasons and need for the controls and any incentives recommended, and the effect of such controls and incentives.

(Ord. 106348 § 9.06, 1977.)

25.12.620 Right of appeal to Council.

Any party of record may appeal the findings and recommendations of the Hearing Examiner regarding controls and/or economic incentives by filing with the Council and serving on other parties of record a written notice of appeal within thirty(30) days after the Hearing Examiner's decision is served on the party appealing.

(Ord. 106348 § 10.01, 1977.)

25.12.630 Procedure on appeal to Council.

A. Any appeal from the findings and recommendation of the Hearing Examiner shall be considered by the Council on the record only. The Hearing Examiner shall promptly prepare, certify and file with the Council such record which shall consist of all documents and exhibits submitted to the Hearing Examiner (except to the extent that the same are already before the Council) and a transcript of all oral proceedings before the Hearing Examiner. The appellant shall be responsible for the reasonable costs of preparation of the record unless the appeal is sucessful, in which event the Council may apportion such reasonable costs as it deems appropriate.

B. The Council or committee to which such appeal is referred shall notify the Board and any appellant of the procedures established for such hearing and of the date and time when it will hear oral argument, if any, from the parties or their representatives upon the issues which are the subject of such appeal. Such notice shall be served upon the Board and the owner not less than twenty (20) days before the date of such oral argument.

(Ord. 106348 § 10.02, 1977.)

25.12.640 Council action on appeal.

The Council may conclude such an appeal by enacting a designating ordinance as provided in Sections 25.12.650 and 25.12.660, adopting a committee report denying designation, or by such other action it deems appropriate.

(Ord. 106348 § 10.03, 1977.)

25.12.650 Designating ordinance—Generally.

Pursuant to the procedures set forth in this chapter, the Council may by ordinance specify controls and economic incentives with respect to sites, improvements or objects designated by the Board and pursuant to such

procedures the Council may by ordinance amend or repeal any such designating ordinance; provided:

A. That if an ordinance designating a landmark or a landmark site imposes specific controls upon such landmark or landmark site, no proceedings may be commenced under this chapter to impose other or further controls on such landmark or landmark site within four (4) years from the effective date of such designating ordinance without the agreement of the owner in writing; and

B. That if any landmark or landmark site is substantially destroyed by fire, earthquake or other casualty not envisioned at the time of designation, the owner may petition the Board to revoke the designation.

(Ord. 106348 § 11.01(a), 1977.)

25.12.660 Designating ordinance—Information required.

A. Each designating ordinance, and each ordinance amendatory thereof, shall include:

1. The legal description of the site, improvement or object;

2. The specific features or characteristics which are designated to be preserved;

3. The reasons and basis for such designation; and

4. The specific controls imposed and any economic incentives granted or to be granted or obtained with respect to such site, improvement or object.

B. A certified copy of each such ordinance shall be recorded with the King County Director of Records and Elections and served on the owner and on the person in charge of such landmark site or landmark.

(Ord. 106348 § 11.01(b), 1977.)

Subchapter VI Alterations or Significant Changes

25.12.670 Requirement of certificate of approval.

After the filing of an approval of nomination with the Superintendent and thereafter as long as proceedings for a designation are pending or a designating ordinance so requires, a certificate of approval must be obtained, or the time for denying a certificate of approval must have expired, before the owner may:

A. Make alterations or significant changes to specific features or characteristics of the site, improvement or object suggested for preservation in the approval of nomination, or thereafter specified in the report on approval of designation of the decision of the Hearing Examiner, whichever was issued most recently, while proceedings under this chapter are pending; or

B. Make alterations or significant changes which would be in violation of specific controls imposed by a designating ordinance.

(Ord. 106348 § 12.01, 1977.)

25.12.680 Application for certificate of approval—Filing.

Application for a certificate of approval may be made by filing an application for such certificate with the Board, or by filing with the Superintendent an application for a permit to make alterations or significant changes for which a certificate of approval is required because of the pendency of designation proceedings, or the terms of a designating ordinance. The Board may consider or issue a certificate of approval without the submission of final drawings, plans or specifications.

(Ord. 106985 § 6(part), 1977: Ord. 106348 § 12.02(a), 1977.)

25.12.690 Application for certification of approval—In conjunction with permit application.

If before a certificate of approval is obtained, an application is made to the Superintendent for a permit for which a certificate of approval is required, the Superintendent shall promptly refer such application to the Board and such application shall be deemed an application for a certificate of approval. The Superintendent shall continue to process such application, but shall not issue any such permit until the time has expired for filing with the Superintendent the notice of denial of a certificate of approval or a certificate of approval has been issued pursuant to this chapter; provided that if by its terms or the provisions of Section 25.12.810 the operation of such certificate of approval is suspended the Superintendent shall not issue such permit until the suspension terminates.

(Ord. 106985 § 6(part), 1977: Ord. 106348 § 12.02(b), 1977.)

25.12.700 Application for certificate of approval—Similar changes.

After the Board has commenced proceedings for the consideration of any application for a certificate of approval for a particular alteration or significant change, by giving notice of a hearing pursuant to Section 25.12.720 or otherwise, no other application for the same or a similar alteration or significant change may be made until such proceedings and all appeals therefrom pursuant to this chapter have been concluded.

(Ord. 106985 § 6(part), 1977: Ord. 106348 § 12.02(c), 1977.)

25.12.710 Fee for certificate of approval.

The fee for such certificate of approval shall be according to the Permit Fee Ordinance (106106).[1]

(Ord. 106985 § 6(part), 1977: Ord. 106348 § 12.02(d), 1977.)

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[1] Editor's Note: Ord. 106106 has been repealed by Ord. 107379. The current Permit Fee Ordinance is codified in Title 22 of this Code.

25.12.720 Board hearing on certificate of approval.

Within thirty (30) days after the filing of an application for a certificate of approval with the Board or the referral of an application to the Board pursuant to Sections 25.12.680 or 25.12.690, the Board shall hold a hearing thereon and shall serve notice of the hearing on the owner and the applicant not less than ten (10) days before the date of the hearing; provided that no hearing shall be required if the Board, the owner and the applicant agree in writing to a stipulated certificate of approval approving the requested alterations or changes with such modifications as may be agreed upon. If an agreement on a stipulated certificate of approval is reached or if, after a hearing, the Board orders a certificate of approval, such certificate shall be issued forthwith and the Board shall file a certified copy of such certificate with the Superintendent.

(Ord. 106348 § 12.03, 1977.)

25.12.730 Board decision on certificate of approval.

The Board shall issue a written decision either granting or denying a certificate of approval not later than forty-five (45) days after the filing of the application for permit with the Superintendent or after the filing of an application for a certificate of approval with the Board and shall serve a copy thereof upon the owner, the applicant and the Superintendent within three (3) work-

ing days afer such grant or denial. A decision denying a certificate of approval or attaching conditions to the grant of a certificate of approval shall contain an explanation of the reasons for the Board's decision and specific findings with respect to the factors enumerated in Section 25.12.750. Except by written agreement with the owner and the applicant, neither the Board nor the Hearing Examiner may attach any conditions to the grant or denial of the certificate of approval, if the effect of such conditions would be to impose controls which are prohibited by this chapter, or if such conditions would otherwise be inconsistent with the provisions of this chapter or any applicable designating ordinance.

(Ord. 106348 § 12.04, 1977.)

25.12.740 Appeal to Hearing Examiner.

Any interested person of record may appeal to the Hearing Examiner the decision of the Board to grant, deny or attach conditions to a certificate of approval by serving written notice of appeal upon the Board and filing such notice and a copy of the Board's decision with the Hearing Examiner within fifteen (15) days after such grant, denial or conditional grant. Except as otherwise specified in Sections 25.12.670 through 25.12.780, the Hearing Examiner shall hold a hearing in the same manner as provided in Sections 25.12.530 through 25.12.610 for hearings on the application of controls and economic incentives.

(Ord. 106348 § 12.05, 1977.)

25.12.750 Factors to be considered by Board or Hearing Examiner.

In considering any application for a certificate of approval the Board, and the Hearing Examiner upon any appeal, shall take into account the following factors:

A. The extent to which the proposed alteration or significant change would adversely affect the specific fea-

tures or characteristics specified in the latest of: the Board approval of nomination, the Board report on approval of designation, the stipulated agreement on controls, the Hearings Examiner's decision on controls, or the designating ordinance;

B. The reasonableness or lack thereof of the proposed alteration or significant change in light of other alternatives available to achieve the objectives of the owner and the applicant; and

C. The extent to which the proposed alteration or significant change may be necessary to meet the requirements of any other law, statute, ordinance, regulation, code or ordinance; and

D. Where the Hearing Examiner has made a decision on controls and economic incentives, the extent to which the proposed alteration or significant change is necessary or appropriate to achieving for the owner or applicant a reasonable return on the site, improvement or object, taking into consideration the factors specified in Sections 25.12.570 through 25.12.600 and the economic consequences of denial; provided, that in considering the factors specified in Section 25.12.590 for purpose of this subsection, references to times before or after the imposition of controls shall be deemed to apply to times before or after the grant or denial of a certificate of approval.

(Ord. 106348 § 12.06, 1977.)

25.12.760 Hearing Examiner procedure.

A. The Hearing Examiner shall serve notice of the date of the hearing on the parties not less than twenty (20) days before the hearing and shall hold a hearing not later than eighty (80) days after the filing of the application for a certificate of approval. The Hearing Examiner shall issue a decision within fourteen (14) days after the conclusion of the hearing and shall serve

the decision on the Board, the owner and the applicant and file the same with the Superintendent within three (3) working days thereafter.

B. The Hearing Examiner may appoint an expert or experts to provide advice or report concerning the economic effect of the denial of a certificate of approval or the imposition of proposed conditions. The Hearing Examiner shall receive evidence at the hearing upon the factors specified in Section 25.12.750 and in reaching a decision shall make findings on such factors. If the Hearing Examiner determines that there is no showing of a significant change in circumstances since a previous application for a similar certificate, the appeal shall be denied.

(Ord. 106348 § 12.07, 1977.)

25.12.770 Failure of timely decision.

If the Board or Hearing Examiner fails to issue and serve a written decision upon the Superintendent, the owner, and the applicant within the times specified in Section 25.12.730, of as the same may be extended in accordance with Section 25.12.850 D, an unconditional certificate of approval shall be deemed to have been granted and the Superintendent shall issue all necessary permits for the proposed alteration when all other requirements for issuance have been satisfied.

(Ord. 106348 § 12.08, 1977.)

25.12.780 Appeal to Council.

The decision of the Hearing Examiner shall be final unless the action proposed by the owner or applicant involves demolition of an improvement, or destruction of an object, or an estimated cost of One Hundred Thousand Dollars ($100,000.00) or more. In any such case, the owner or the applicant may appeal on the record to the Council any decision of the Hearing Examiner which

denies, or attaches conditions to the grant of a certificate of approval, by filing written notice of appeal with the Hearing Examiner, the Board and the Council within fifteen (15) days after such decision. The proceedings and procedure on such appeal shall be in accordance with Section 25.12.630 except that the Council shall adopt a resolution embodying its decision not later than two hundred thirty (230) days after the filing of the application for a certificate of approval and shall serve a copy of such resolution upon the Superintendent, the owner, and the applicant not later than three (3) working days thereafter.

(Ord. 106348 § 12.09, 1977.)

25.12.790 Suspension by the Board.

An order of the Board granting a certificate of approval for a proposed alteration which involves demolition of any protected features of a site, improvement or object may provide that the operation of the certificate shall be suspended for a period of time not to exceed sixty (60) days unless extended pursuant to Section 25.12.810.

(Ord. 106348 § 13.01, 1977.)

25.12.800 Suspension by Hearing Examiner.

A. If an appeal has been taken from a Board decision granting, denying, or conditionally granting a certificate of approval for a proposed alteration which involves demolition of all or any part of the protected features of a site, improvement or object then:

1. During the appeal proceedings the Board shall investigate the feasibility of developing a plan meeting the requirements of Section 25.12.810 A; and

2. The Board shall present evidence thereon to the Hearing Examiner.

B. If on such appeal the Hearing Examiner determines that a certificate of approval should be granted or that one or more of the conditions previously adopted by the Board should be revoked or modified and if there is a showing of a reasonable cause to believe that the subject plan is feasible, the order of the Hearing Examiner ordering the granting of a certificate of approval for such alteration may provide that the operation of the certificate shall be suspended for a period not to exceed thirty (30) days unless extended pursuant to Section 25.12.810.

(Ord. 106348 § 13.02, 1977.)

25.12.810 Effect of suspension of certificate of approval.

When the operation of a certificate of approval is suspended, the following provisions shall apply:

A. The Board, in consultation with the owner and the applicant, shall attempt to prepare a plan under which the site, improvement or object or protected features thereof may be preserved or perpetuated in such manner or form as to both effectuate the purpose of this chapter and to render the site, improvement or object capable of realizing a reasonable return.

B. If written agreement on such a plan is not reached within thirty (30) days of the issuance of such certificate the Board may, within ten (10) days after the expiration of said time, file with the Mayor and Superintendent and serve on the owner and the applicant a written recommendation that the City acquire a specified appropriate protective interest in the property and the filing of such recommendation shall extend the period of suspension until termination in accordance with Section 25.12.820.

(Ord. 106348 § 13.03, 1977.)

25.12.820 Termination of suspension.

The suspension of a certificate of approval shall terminate:

A. If the recommendation provided for in Section 25.12.810B is not served and filed in a timely fashion; or

B. If within ninety (90) days after the service and filing of such recommendation, the City neither commences a court action to condemn such interest or any other appropriate protective interest agreed upon by the Mayor and the Board, nor enters into a contract with the owner to acquire such interest; or

C. Upon the expiration of the period of suspension when no recommendation has been filed.

(Ord. 106348 § 13.04, 1977.)

25.12.830 Effect of termination of suspension.

Whenever a suspension terminates, the Superintendent shall forthwith issue the permit if all other requirements for the issuance of a permit shall have been met.

(Ord. 106348 § 13.05, 1977.)

Subchapter VII General Provisions

25.12.840 Service of notices.

A. Notices, decisions, and any other instruments or documents required to be served upon the owner pursuant to this chapter shall be served by mailing the same: (1) to the person shown to be the owner on the records of the Department of Finance of King County, Washington, to the address therein given and to such other addresses as may be ascertained from telephone or Polk directory listings for the City; and (2) to the owner's attorney where the files or records of the Board, the Hearing Examiner, or the Council, reveal representation in such proceedings by an attorney; and (3) to the person in charge of a site, improvement or object. Notices, applications, other instruments or documents required to be served upon the Board shall be served by delivering the same to the Historic Preservation Officer or by mail-

ing the same either to the Historic Preservation Officer or to the Landmarks Preservation Board at the then current address for such Officer or Board. Transmittals by mail shall be sent by first-class mail, certified with return receipt requested and with postage prepaid. Service shall be deemed to have been given when all of the steps specified above have been completed. Failure to send notice by mail to any owner whose address is not listed in the above sources, and failure to give actual notice to any owner whose name and address is unknown, shall not invalidate any proceedings in connection with the proposed designation.

B. Notice to parties of record shall include at least those documents sent to the owner. Such notice shall be served by first-class mail.

C. Notice to interested persons of record shall include at least the following: a description of the most recent action taken by the Board, the Hearing Examiner or Council; the time and place of the next public meeting or hearing, if any; the procedure to be followed at such meeting or hearing; the rights of appeal available, if applicable; and the time and place where documents in the record may be inspected. Such notice shall be served by first-class mail.

D. The Historic Preservation Officer may give such other notice as he may deem desirable and practicable.

(Ord. 106348 § 14.01, 1977.)

25.12.850 Termination of proceedings.

A. In any case where a site, improvement or object is nominated for designation as a landmark site or landmark and thereafter the Board fails to approve such nomination or to adopt a report approving designation of such site, improvement or object, such proceeding shall terminate and no new proceeding under this chapter may be commenced with respect to such site, improvement or

object within five (5) years from the date of such termination without the written agreement of the owner.

B. In any case where a site, improvement or object has been designated by the Board, in the absence of a written agreement with the owner deferring consideration of the imposition of controls or Board approval of a negotiated agreement pursuant to Section 25.12.500, such proceeding shall terminate and no new proceeding under this chapter with respect to such site, improvement or object may be commenced within four (4) years from the date of such termination without the written agreement of the owner if:

1. The Board fails to file with the Hearing Examiner its statement of proposed controls within the time prescribed in Section 25.12.530; or

2. The Hearing Examiner does not issue a decision which recommends controls, together with a proposed form of designating ordinance, within one hundred (100) days after the filing of the Board's recommendations on controls and incentives, or within such further time as the Board and the owner may agree to by written stipulation; provided, that if the Hearing Examiner issues a decision which does not recommend controls such proceedings shall terminate if no appeal is filed with the City Council within the time limited for filing such appeal.

C. In any case where a designating ordinance imposing specific controls is enacted, no further proceedings under this chapter to impose other or further controls on such landmark or landmark site may be commenced within four (4) years from the effective date of such designating ordinance without the written agreement of the owner.

D. When delays in the proceedings pursuant to this chapter result from any of the following:

1. The owner's request for a continuance or extension; or

2. The owner's stipulation to a continuance or extension; or

3. The requirements of any other ordinances or any statutes; or

4. The institution of court proceedings challenging proceedings under any section of this chapter;

then, the time limits specified in this chapter shall be extended accordingly, and in the case of the institution of court proceedings such time periods will be stayed until the termination of such court action.

(Ord. 106348 § 14.02, 1977.)

25.12.860 Revision or revocation of designation, controls, incentives.

At the end of four (4) years after the effective date of a designating ordinance, the owner may file with the Board an application to revoke designation of a site, improvement or object as a landmark site or landmark or an application to modify or revoke the controls or economic incentives previously established with respect thereto. Proceedings with respect to any such application shall proceed in the manner specified in Sections 25.12.380 through 25.12.640; provided that the burden shall be on the owner to demonstrate that a substantial change in circumstances has occurred to justify revision or revocation. Revocation of designation shall have the further effect of the termination of all controls and all present and future benefits from granted economic incentives. Termination of revocation or revision proceedings shall have the effects specified in Section 25.12.850.

(Ord. 106348 § 14.03, 1977.)

25.12.870 Staff reports and studies.

When a site, improvement or object is the subject of any proceeding pursuant to this chapter, the owner, upon request therefor, shall be promptly furnished with a copy

of all Board staff reports, inspections, and studies prepared for the use of the Board with respect to the issues under consideration. Unless otherwise expressly specified by the owner, a request for a copy of such report, inspection and studies shall be treated as a continuing request for copies of all such documents prepared until the proceeding has terminated.

(Ord. 106348 § 14.04, 1977.)

25.12.880 Economic incentives—City authorities.

All City authorities, including the Council, to the extent that they have the power to do so, may take such action as may be necessary to grant economic incentives, and may make any such action or grant conditional upon the subsequent enactment of a designating ordinance. When any application is made for the granting of recommended, requested or required economic incentives, all responsible City authorities shall give such application priority on their respective schedules and shall reach their respective decisions with all possible speed.

(Ord. 106348 § 14.05, 1977.)

25.12.890 Conformance with general development.

In all proceedings under this chapter, the Board and the Hearing Examiner shall consider and in their respective reports or decisions make findings on the conformance or lack of conformance of the proposed action with the desirable long-term overall development of the City, including, without limitation, any then existing comprehensive plan.

(Ord. 106348 § 14.06, 1977.)

25.12.900 Advice and guidance to property owners.

The Board may, upon request of the owner of the site, improvement or object, render advice and guidance with

respect to any proposed work on a landmark or landmark site.

(Ord. 106348 § 14.07, 1977.)

Subchapter VIII Enforcement and Penalties

25.12.910 Designated.

The Superintendent shall enforce this chapter and any designating ordinances enacted pursuant thereto or pursuant to Ordinance 102229 [1] and may, in addition to any other remedy or penalty provided in this chapter, seek injunctive relief for such enforcement. Anyone violating or failing to comply with the provisions of this chapter or any designating ordinance shall, upon conviction thereof, be fined a sum not exceeding Five Hundred Dollars ($500.00), and each day's violation or failure to comply shall constitute a separate offense; provided, however, that no penalty shall be imposed for any violation or failure to comply which occurs during the pendency of legal proceedings filed in any court challenging the validity of the provision or provisions of this chapter, as to which such violation or failure to comply is charged.

(Ord. 106348 § 14.08, 1977.)

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[1] Editor's Note: Ord. 102229 is the previous landmarks preservation ordinance.

ORDINANCE 112425

AN ORDINANCE relating to historic preservation, imposing controls upon the First Covenant Church, a Landmark designated by the Landmarks Preservation Board under Chapter 25.12 of the Seattle Municipal Code (Ordinance 106348).

WHEREAS, the Landmarks Ordinance, Chapter 25.12 of the Seattle Municipal Code (Ordinance 106348), establishes a procedure for the designation and preservation of structures and areas having historical, cultural, architectual, engineering or geographic importance; and

WHEREAS, The Landmarks Preservation Board after a public hearing on October 15, 1980, voted to approve the nomination of the First Covenant Church at 1500 Bellevue Avenue in Seattle as a Landmark under Code Chapter 25.12; and

WHEREAS, after a public hearing on January 7, 1981, the Board voted to approve the designation of the First Covenant Church as a Landmark under Code Chapter 25.12; and

WHEREAS, on April 22, 1981, the Board voted to adopt controls and incentives on the First Covenant Church and recommended to the City Council approval of those controls and incentives; and

WHEREAS, after a public hearing on June 3, 1981, the Hearing Examiner recommended that the controls and incentives be approved by the City Council; and

WHEREAS, on February 26, 1985, the Land Use Committee affirmed the recommendations of the Board and the Hearing Examiner; Now Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. That the designation by the Landmarks Preservation Board of the First Covenant Church, more particularly described as:

Twelfth Avenue Addition Replat,

Block 7, Lots 6 & 7.

as a Landmark based upon satisfaction of the following criteria of Code Section 25.12.350:

(1) It embodies the distinctive visible characteristics of an architectural style, or period, or of a method of construction; and

(2) Because of its prominence of spatial location, contrasts of siting, age, or scale, it is an easily identifiable visual feature of its neighborhood or the city and contributes to the distinctive quality or identity of such neighborhood or the city.

is hereby acknowledged.

Section 2. The following controls upon alteration of the landmark are hereby imposed:

A Certificate of Approval must be obtained or the time for denying a Certificate of Approval must have expired before the owner may make any alteration which requires a building permit, to any portion of the exterior of the building; Provided, that all in kind maintenance and repair of the exterior and any alterations which do not require a building permit shall be excluded from the Certificate of Approval requirements; and Provided further that nothing herein shall prevent any alteration of the exterior when such alterations are necessitated by changes in liturgy, it being understood that the owner is the exclusive authority on liturgy and is the decisive party in determining what architectural changes are appropriate to the liturgy. When alterations necessitated by changes in liturgy are proposed, the owner shall advise the Landmarks Preservation Board in writing of the nature of the proposed alterations and, the Board shall issue a Certificate of Approval. Prior to the issuance of any Certificate, however, the Board and owner shall

jointly explore such possible alternative design solutions as may be appropriate or necessary to preserve the designated features of the landmark.

Section 3. Enforcement of this Ordinance and penalties for its violation shall be as provided in Section 25.12.910 of the Seattle Municipal Code.

Section 4. The City Clerk is hereby directed to record this Ordinance with the King County Director of Records and Elections, deliver two copies to the City Historic Preservation Officer, 400 Yesler Building, and deliver one copy to the Director of the Department of Construction and Land Use.

Section 5. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 9th day of September, 1985, and signed by me in open session in authentication of its passage this 9th day of September, 1985.

/s/ [Illegible]
President of the City Council

Approved by me this 17th day of September, 1985.

/s/ [Illegible]
Mayor

Filed by me this 17th day of September, 1985.

Attest: /s/ Tim Hill
City Comptroller and City Clerk

[SEAL]

Published .....

By /s/ Theresa Dunbar
Deputy Clerk

[Logo Omitted]

City of Seattle
Department of Community Development/
Office of Urban Conservation

Landmark Nomination Form

Name First Covenant Church (Swedish Tabernacle)
(Common, present or historic)

Year Built 1910-1911

Street and Number 1500 Bellevue Avenue

Assessor's File No. 872560-0465

Legal Description Plat Name Twelfth Avenue Addition Replat Block 7 Lot 6 & 7

Present Owner First Covenant Church

Present Use Religious

Address 1500 Bellevue Avenue

Original Owner First Covenant Church

Original Use Religious

Architect John A. Creutzer

Builder Alexander Pearson

Description: Present and original (if known) physical appearance and characteristics

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First Covenant Church was built between 1910 and 1911 of masonry construction in an eclectic style derived from the northern renaissance. Its external form is based upon a rectangular, two-and-one-half story mass surmounted by a dome. It is prominently situated on a sloping corner lot just above a bend in Pike Street at the corner of Bellevue Avenue. Three elevations are exposed to view, with the fourth wall abutting a seven story apartment building.

The exterior of the church is faced in ashlar blocks of smooth-faced sandstone. The foundation is given a rusticated treatment with the upper stories laid in courses of alternating widths. The principal facade is organized into a series of seven bays, five of which are recessed behind engaged Tuscan columns. These are followed by a continuous doric entablature of sheet metal and a broad pediment which unifies the five central bays and engaged columns within an order similar to that of a free-standing portico. Both of the side elevation are ordered into a series of six bays defined by flat pilasters. These are also followed by the entablature and short parapet walls. Fenestration follows the two story plus basement floor configuration surrounding the auditorium and consists of rectangular windows most of which are divided by mullions and transoms in the form of christian crosses. Transom lights at the main story are embellished with tinted glass, and second story windows are entirely filled with tinted glass. Panelled spandrels separate the windows of the first and second stories within each bay. Small windows are placed asymmetrically at the southwest corner of the church to correspond with internal flights of stairs. Because of the sloping grade at the main facade, and the absence of an adequate setback necessary to allow for the provision of stairs, the pri-

mary entrance is located at the extreme-right of the facade where the grade rises to the level of the main floor. Basement level doorways are by contrast placed symmetrically at each end of the Bellevue Avenue facade where the gradient is even and level with the floor.

The church's most readily identifiable feature is its dome and cupola which rises from behind the parapet wall. The dome is ribbed, and elliptical in section, and is surmounted by a classical cupola consisting of a columned drum and a round dome.

The major interior space of the church consists of a large centric auditorium centered beneath the ribbed, interior shell of the dome. A rostrum and a choir are placed to one side of this space and semi circular seating, oriented and inclined toward the rostrum, is provided at the main floor and balcony levels. Seating at both levels extends well beyond the ring of marbleized columns supporting the dome. The balcony projects approximately six feet into the central space, and is embellished by an ornate plaster balustrade decorated with pannels and cartouches. A series of circular windows punctuate the lower portion of the dome between ribs, providing natural light to the interior. A large chandelier hangs from the center of the dome.

Statement of significance

First Covenant Church, also referred to as Swedish Tablenacle, is a significant part of Seattle's Swedish heritage. The church was first organized by Swedish immigrants in 1889 as the Swedish Mission Church. The present building represents the congregation's third religious edifice and replaces a smaller frame structure built in 1901. The present church was designed by architect John Creutzer who had earlier moved to Seattle from Spokane. It was constructed between 1910 and 1911.

First Covernant Church is also of architectural significance as a competent and relatively unaltered example of Renaissance inspired eclecticism. It is also one of only three domed structures of its type remaining in Seattle, sharing this distinction with the First United Methodist Church and the Langston Hughes Cultural Arts Center.

The church is also of important significance as an element of the townscape. Because of its prominent location just above a bend in Pike Street, the church terminates an important visual corridor. This relationship contributes to the distinctive identity of the surrounding neighborhood.

[Photographs Omitted in Printing]

Photographs:

[Photograph Omitted in Printing]

Submitted by: Office of Urban Conservation Staff

Address 400 Yesler Building Phone 625-4501

Date _____

Reviewed _____ Date _____
Historic Preservation Officer

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Recommendation of
the Landmarks Preservation Board for

FIRST COVENANT CHURCH

File No. LP-81-002

Introduction

The Landmarks Preservation Board (Board) filed its Recommendations on Controls and Incentives with the Hearing Examiner pursuant to Section 25.12.530, Seattle Municipal Code, for the First Covenant Church, located at 1500 Bellevue Avenue.

A hearing was held on this matter June 3, 1981. The property owner was represented by A.T. Wendells, Wendells, Froelich, Power and Lakefish; the Board by Assistant City Attorney James Fearn, Jr.

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this recommendation.

Findings of Fact

1. The subject property, the First Covenant Church, is located at 1500 Bellevue Avenue. The legal description is: Twelfth Avenue Replat, Block 7, Lots 6 and 7.

2. The church building, designed by John Creutzer, was erected in 1910-11. Located just above the bend in Pike Street, First Hill, the building features a ribbed dome, crowning cupola, and other distinguishing features.

3. By document of November 19, 1980, amended November 25, 1980, the Landmarks Preservation Board recommended designation of the church as a landmark based on the following code criterion:

> It embodies the distinctive visible characteristics of an architectural style, or period, or of a method of construction. Section 25.12.350(D), Seattle Municipal Code.

The supporting analysis characterized the building as an "architectuarally distinguished structure which embodies a classical design reminiscent of the northern renaissance." Board's Exhibit 2.

4. In addition, the Staff Recommendation determined that the "readly identifiable structure" contrasted sharply with the prevailing vicinity area flat roof forms; that its prominent siting on the north shoulder of First Hill just above a bend in Pike Street terminated an important visual corrider; and that the building represented "a conspicuous feature of the First Hill skyline when viewed from the Denny Regrade." The following ordinance criterion was deemed satisfied:

> Because of its prominence of spatial location, contrasts of siting, age, or scale, it is an easily identifiable visual feature of its neighborhood or the city and contributes to the distinctive quality or identity of such neighborhood or the city. Section 25.12.350 (F), Seattle Municipal Code.

5. The Notice of Report on Designation, issued January 21, 1981, stated that as to the features/characteristics to be preserved, the entire exterior of the church building should be preserved based on the criterion concerning spatial location, siting, scale:

> Because of its prominent siting and distinctive form the church contributes positively to the character and identity of the area.

6. The Staff Recommendation on Landmark Controls and Incentives was issued April 21, 1981, "To assure preservation of the specified features and characteristics of the . . . landmark.", the Recommendations required a

Landmarks Board Certificate of Approval before "alterations or significant changes to the exterior of the building where the changes would require application for a Building Permit." (Board's Exhibit 2.)

7. The Recommendation included provisos excluding in kind maintenance and repair and excluding liturgically necessary changes, so long as the owner communicates the nature of the proposed change for Board comment, and the Board and owner jointly explore alternative design features as appropriate. And, "if required the Board shall issue a Certificate of Approval."

8. In the Staff Recommendation for Designation, it was noted that the church entrance configuration had been altered in recent years with the closure of the "original entrance portals at the Pike Street facade." In point of fact the church has undergone two major remodelings, one in approximately 1948 and the other in 1970. The latter involved the complete change of the church's entrance way. Three of the prior four heavy wooden door entrances were eliminated in favor of a more open, translucent material.

9. The owner consistently objected to the designation and to the controls, citing concerns with the additional bureaucracy; with constitutionality of the Landmarks Ordinance; with the Board's failure to specify features to be preserved; and with the fact that the present building appearance is much different from the original architecture. Negotiations failed and the issue of controls and incentives was referred to the Hearing Examiner for recommendation to the Seattle City Council.

Conclusions

1. The Hearing Examiner may not recommend any control that is not set forth with adequate specificity or that is inconsistent with the Ordinance. Additionally, no control for which the reason or need is not established with respect to the specific features/characteristics of a

site may be recommended; neither use restrictions nor restrictions that prevent the owner from realizing a reasonable return on the site. Section 25.12.570, Seattle Municipal Code.

2. Neither the Ordinance constitutionality (separation of church and state; equal protection; unjust deprivation of property by the government) nor the designation is a proper subject of the Examiner's decision.

> On the basis of all the evidence presented, the *Hearing Examiner shall determine whether to recommend* all or any of the proposed *controls and incentives, and/or* whether to recommend *a modified version* of any of the proposed controls or incentives (emphasis added). Section 25.12.570, Seattle Municipal Code.

3. The control on the entire exterior of the building is adequately specific. It is reasonably clear that no exterior changes may be effected without Board approval, provisos excluded.

4. The effect of the controls is not to require a particular use. Although the building design was for a church, no provision restricts buildings erected as churches to church use. Preservation of the edifice does not require preservation of its existing use.

5. Nor do the additional administrative requirements for certain exterior alterations so hamper the structure that the building is limited to church use.

6. The remaining issue is whether the reason and need for the controls with respect to certain features of the site is established. While it could be urged that since the ultimate Designation criterion was spatial siting—and not architectural style, as originally recommended—controls on the exterior should be of a diminished concern. This suggestion, however, ignores the practical considerations and thrust of the ordinance. The exterior of the building contributes to its serving as "an easily identifiable visual

feature of its neighborhood." Therefore, although the architectural criterion was not final, the one selected generally supports the need for controls on the building exterior.

7. The entire building exterior, the "specific feature(s)" to be preserved, is prominently sited. Without controls, the specific feature could be destroyed or significantly altered such that the building-community nexus would be nonexistant.

8. However, the ordinance policy is to prevent the "unnecessary destruction or defacement of (such) cultural assets." Section 25.12.020, Seattle Municipal Code. We question whether the exterior changes necessitated by liturgy are tantamount to Ordinance envisioned "unnecessary destruction or defacement". Accordingly, the recommendation of the Hearing Examiner to the City Council is as follows:

Recommendation

To assure preservation of the specified features and characteristics of the above designated Seattle Landmark, a Certificate of Approval issued by the Landmarks Board must be obtained, or the time for denying a Certificate of Approval must have expired, before the owner may make alterations or significant changes to the exterior of the building where those changes would require application for a Building Permit, provided that all in kind maintenance and repair and changes necessitated by changes in liturgy of the above features and characteristics shall be excluded from the Certificate of Approval requirements.

Entered this 2nd day of July, 1981.

/s/ Leroy McCullough
LEROY MCCULLOUGH
Hearing Examiner

NOTICE OF RIGHT TO PETITION FOR FURTHER CONSIDERATION

Pursuant to 24.72.090, Seattle Municipal Code, Section 27.51 of the Zoning Ordinance 86300, as amended, any party affected by a recommendation of the Hearing Examiner may submit a petition in writing to the City Council requesting further consideration. The petition must be submitted within fourteen days after the date of mailing the recommendation of the Hearing Examiner and must be addressed to: City Council, Urban Development and Housing Committee, Municipal Building, Seattle, Washington 98104.

The petition should state clearly and concisely the reason(s) why further consideration is necessary, and should refer specifically to any errors alleged to exist in the Hearing Examiner's Findings and Conclusions. The City Council's consideration of the petition will be based upon the record of the Hearing Examiner's hearing, and new exhibits or other evidence in support of the petition should *not* be submitted. The Council, in its discretion, may allow oral or written arguments based on the record when it considers the petition.

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

No. 86-2-01179-0

FIRST COVENANT CHURCH OF SEATTLE, WASHINGTON,
a non-profit corporation,
Plaintiff,

vs.

THE CITY OF SEATTLE,
a Washington municipal corporation,
Defendant.

AFFIDAVIT IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

STATE OF WASHINGTON)
) : ss.
COUNTY OF KING)

A. T. WENDELLS, being first duly sworn, deposes and says:

I am an attorney for the Plaintiff in this case, but I am making this affidavit on my personal knowledge. I have been a member of First Covenant Church for over 50 years, and I have been either Chairman or a member of the Board of Trustees through all except one year of the course of the Landmark preservation dispute with the City of Seattle. I have participated in all of the meetings, hearings, and correspondence involved in this matter.

This affidavit will be limited in its scope. The Church has several points of grievance with the City of Seattle involving the deficiencies of the Landmarks Preservation Ordinance, and the designation ordinance, the procedures

followed in this case, and the arbitrariness of the decision, but those will require a long involved trial. Facts involved in those matters are not presented in this affidavit. This motion and this affidavit raise only very basic questions concerning the constitutionality of the application of the Landmarks Preservation Ordinances to churches, and the lack of legislative intent to do so. We submit that those questions should be resolved first. Facts stated in this affidavit will be limited to those questions.

I will state as facts those allegations of the Complaint which are denied in the answer for want of information:

1. The First Covenant Church of Seattle, Washington is a Washington corporation incorporated under the provisions of RCW, Title 24, and it is in good standing with the Secretary of State of the State of Washington. The said Church is the owner and occupant of the church structure located at Pike and Bellevue in the city of Seattle, which is the subject of the Landmark designation herein complained of.

3. First Covenant Church is a religious organization. It is currently active with a full religious program. Its church structure at Pike and Bellevue is devoted solely to uses related to the religious program of the Church.

7. The effects of the designation of First Covenant Church as a Landmark will be:

> a. To limit the right and opportunity of First Covenant Church to make changes on the exterior of the building for the promotion of its religious mission without secular evaluation and approval by the City.

The procedural requirements of the Landmarks Preservation Ordinance were generally followed in the nomination and designation process, and the Church consistently objected and opposed the nomination and designation.

One step involved negotiation by the Landmark Preservation Board's staff for agreement on controls and

incentives. Incentives are defined in Ordinance No. 106348 as follows:

> 9. Economic incentives are such compensation, rights or privileges or combination thereof, which the Council, or other public body or agency, by virtue of applicable present or future legislation, may be authorized to grant to or obtain for the owner as consideration for the imposition of controls on a designated landmark site or landmark.

I attended the negotiation meeting with the Board's staff person, who plainly stated that no incentives would be offered or available since the City could not make any grants or special privileges to a church due to constitutional "establishment clause" prohibitions. No incentives have been offered, considered, or mentioned subsequent to the negotiation meeting.

The Church has no present plans for any modification of the exterior of the building. Its opposition to designation is based on the possibility that it may wish to make exterior alterations at some time in the future. It will do so for religious purposes to assist in accomplishing its religious missions. It considers that the requirement of approval by an administrative authority with architectural and aesthetic concerns, rather than religious concerns, is a violation of the Church's free exercise rights.

DATED this 25th day of August 1986.

/s/ A. T. Wendells
A. T. WENDELLS

SUBSCRIBED AND SWORN TO before me this 25th day of August, 1986.

/s/ Virginia L. Murphy
Notary Public in and for the
State of Washington,
residing at Seattle